SUPREME COURT OF THE UNITED STATES.

No. 294.

THE UNITED STATES, APPELLANTS,

vs.

CLARK'S FOUNDRY, &c., JOHN CLARK ET AL., CLAIMANTS AND INTERVENORS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Libel of information, filed November 5th, 1863.*

To the honorable the judges of the sixth judicial circuit of the United States, sitting in and for the eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court in his own proper person, in the name and behalf of the said United States of America, and William W. Lamberton against the buildings, lots of ground on which they stand, and the tools and appliances, &c, of said buildings known as Clark's Foundry, hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

1. That James Graham, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes," heretofore, that is to say, on the 21st day of October, in the year one thousand eight hundered and sixty-three, seized as forfeited to the United States, at New Orleans, within said district, and within the jurisdiction of this court, the following-described property, to wit: The buildings known as Clark's Foundry, situate in the city of New Orleans, on the corner of Tchoupitoulas and Race streets, with the ground on which they stand, measuring 200 feet front on Tchoupitoulas street, more or less, by a depth of 285 feet on Race street, more or less, together with the tools and appliances belonging to said foundry, as more particular description of said tools, appliances, &c., is herewith filed, marked Exhibit A, and made part of this libel of information. (Description of property as per amendment by order of court, transcribed at page ;) that is to say, the above-described property consists of six lots of ground, situate in the faubourg La Course, now the first district of this city, designated by the Nos. 1, 2, 3, 4, 5, and 6; on a survey made by J. A. D. Hemecourt, deputy surveyor, dated 26th March, 1860, according to which the said six lots of ground measure in American measure as follows:

Lot No. 1 measures 29 feet 10 inches front on Tchoupitoulas street,
2 84 feet 9 inches 6 lines on Race street, 46 feet on a crooked line, narrowing in the rear, so as to measure only 15 feet 1 inch on the rear.

Lot No. 2 measures 23 feet 10 inches and 4 lines on Tchoupitoulas street, 45 feet 8 inches on the line which separates it from lot No. 3, 34 feet 4 inches on a crooked line, also separating it from lot No. 3, narrowing in the rear, so as to measure only 15 feet on the rear line.

Lot No. 3 measures 24 feet 2 inches and 4 lines on Tchoupitoulas street, 78 feet 8 inches on the line dividing it from lot No. 4, 45 feet 8 inches on a line dividing it from lot No. 2, 34 feet 4 inches on a crooked line dividing it also from said lot No. 2, and narrowing so as to the said lot measuring only 16 feet 8 inches on the rear line.

Lot No. 4 measures 24 feet 3 inches on Tchoupitoulas street, by 78 feet 8 inches deep between parallel lines, and 24 feet 3 inches on the rear line.

Lot No. 5 measures 24 feet 3 inches and 2 lines front on Tchoupitoulas street, by 78 feet 8 inches deep between parallel lines, and 24 feet 3 inches and 2 lines in the rear line.

Lot No. 6 measures 59 feet 10 inches and 5 lines front on Race street, 75 feet 4 lines in depth on one side; said lot measuring so as to measure only 31 feet 5 inches on the rear line, and measuring also 13 feet 8 inches on a line dividing it from lot No. 5, 28 feet 6 inches on a line dividing it from a common alley.

Also two lots of ground with all the improvements thereon in the
3 suburb La Course, in the first district of New Orleans, in the square bounded by Tchoupitoulas, New Levee, Race, and Orange streets, designated as lots Nos. 7 and 8, on a plan of H. Mœlhausen, on the 26th April, 1845, deposited in the office of Charles Boudousquie, notary public; said two lots of grounds measure each 26 feet 7 inches 4 lines front on Tchoupitoulas street, by 127 feet 10 inches 5 lines in depth between parallel lines, American measure. Also one other lot of ground in the same square, designated as lot No. 6 on the same plan, which last-mentioned lot measures 26 feet 7 inches 4 lines front on Tchoupitoulas street, by 127 feet 10 inches 5 lines in depth between parallel lines, together with the buildings and improvements on the said lot No. 6; and also all the buildings and improvements on the adjoining lots 7 and 8, by act of donation *inter vivos*, duly accepted from the father of the said Sarah Ann Warner, Wm. N. Batson, passed before Wm. J. Castell, notary in New Orleans, on the 4th of May, 1859. Also a lot of ground, with all the improvements thereon in the faubourg
La Course, in the square bounded by New Levee, Tchoupitoulas, Race,
4 and Orange streets, designated by the No. 1 on a plan drawn by Geo. T. Dumbar, surveyor, dated 1st January, 1845, deposited in the office of J. B. Marks, notary, as plan No. 71; said lot of ground measured 25 feet front on Race street, by 169 feet 5 inches deep between parallel lines, American measure, purchased by Wm. N. Batson from Louise A. A. Dufossat, by authentic act before J. B. Marks, notary in New Orleans, on the 22d day of Jan'y, 1846. Also two other lots of ground, with the improvements thereon, in the first district of New Orleans, in the square bounded by New Levee, Race, Tchoupitoulas, and Orange streets, desigated as lots Nos. 4 and 5 on a plan deposited in the office of O. de Armas, notary in New Orleans, as plan 4. Said 2 lots of ground measure as follows: No. 4 25 feet front on Race street, by 171 feet 6 inches and 3 lines in depth on the line dividing it from lot No. 3, 105 feet 5 inches 2 lines in depth on the line dividing it from lot No. 5, and 68 feet 10 inches on the rear line; No. 5, 33 feet front on Race street, 105 feet 5 inches and 2 lines on the line dividing it from lot No. 4, 78 feet 7 inches and 1 line on the other line nearest to Tchoupitoulas street, and 37 feet 8 inches and 1 line in the rear, and then running 19 feet 7 inches and 7 lines also on the rear line, and which two last-described lots of ground were
purchased by Wm. N. Batson from the succession of David Sidle and
5 wife, by act before Octave de Armas, notary public in New Orleans, on the 13th November, 1858.

The above-described property exceeds in value the sum of five hundred dollars.

II. That by the act of the Congress of the United States, approved August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes," it was provided "that if, during the present or any future insurrection against the government of the United States, after the President of the United States shall have declared by proclamation that the laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her, or their agent, attorney or employee, shall purchase or acquire, sell or give, any property of whatever kind or description, with intent to employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting

such rebellion or resistance to the laws, or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

III. That the President of the United States did, on the 15th of April, 1861, declare by proclamation "that the laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law;" and that on the 16th of August, 1861, he did reiterate said proclamation, and did declare that "such insurrection" still existed, and had not been suppressed.

IV. 1. That the property herein above described was used and employed knowingly by the owner or owners thereof, in aiding, abetting, and promoting the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of the said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by manufacturing projectiles of war, and furnishing materials of war for the use of the enemies of the United States.

2. That the property herein described was used and employed knowingly by the owner or owners thereof in aiding and abetting persons engaged in the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861.

3. That the said property was purchased, or acquired, or sold, or given by the owner or owners thereof, or by his, her, or their agent or employee, with intent to use and employ the same for the purpose of aiding, abetting, and promoting the said insurrection and resistance to the laws after the approval of said act, and after the public proclamations above mentioned, and after the 16th of August, 1861.

4. That the owner or owners of the said property did knowingly consent to the use or employment of it for the purpose of aiding and abetting and promoting said insurrection and resistance to the laws, or of aiding, abetting and promoting persons engaged therein, after the approval of said act, and after the proclamations above mentioned, and after the 16th of August, 1861, by permitting the manufacturing of war materials for the use of the enemies of the United States in insurrection against the said United States.

5. That the owner or owners of said property, his, her, or their agent or employee, did suffer said property to be used or employed in aiding, abetting, or promoting the insurrection proclaimed by the President as aforesaid, and in aiding, abetting, or promoting a person or persons engaged in said insurrection, after the approval of act above mentioned, and after the proclamation of the President duly made public on the 16th day of August, 1861.

V. That by reason of the premises the property herein described became and was forfeited to the United States, and ought to be confiscated and condemned to the use of the said United States.

Wherefore, the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property, and the owner or owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be named therein, to appear and answer this libel of information; and that an
6 order of publication may be made in the usual form, and that all due proceedings being had, this honorable court may be pleased to decree

for the condemnation and forfeiture of the said property to the use and ownership of the United States, and of said Wm. W. Lamberton, informant. And he prays for such further relief as the court is competent to give in the premises.

(Signed) RUFUS WAPLES,
U. S. Attorney for the Eastern Dist. of Louisiana.

On motion of the district attorney it is ordered that he have leave to amend the libel in this case without re-engrossing the same, by adding thereto the description of the property as given by the conveyances office, and the allegation that said property is above the value of five hundred dollars.

CLERK'S OFFICE, *January 4th*, 1864.

A true copy.
(Signed) F. B. VINOT, *D'y Cl'k.*
Filed Nov. 5, 1863.

7 *Inventory of Clark's Foundry, filed with libel.*

Office effects:
1 standing mahogany desk and top case; 1 standing maple desk; 2 iron safes.

2d room:
5 lengths copper pipe; 2 lathes; sundry parts of machinery.

Room 4:
1 screw-cutting machine; sundry parts of engine; 1 lot pulley castings.

Room 5:
1 screw-cutter machine; 1 lot bolts; 1 lot hand thread-cutters; 1 lot sundry irons on wall.

Room 6—machinery room:
1 set work-benches; 5 vices and sundry bench tools; 2 planer machines; 5 lathes for iron works; 2 drill-machines; 1 screw cutter; 1 compound planer; 1 foot lathe; 1 boring-machine; 1 vertical engine; 1 set bending rollers; 1 punching-machine; 1 steam rivetting-machine; 1 vertical engine; 1 set bending rollers; 1 boiler and engine and engine for driving the shop ma-
8 chinery; pulleys, belts, &c., complete.

Shed—south side:
1 lot square and round iron, sundry sizes.

Shed—east side and up-stairs:
1 work-bench; 2 vices; 3 pair steamboat engines; 2 large crank-wheel patterns; 25 trucks, finished; 66 unfinished trucks; 1 lot truck stuff; sundry pieces of iron and machinery.

Foundry and mould shop:
2 cupalo furnaces; 5 ladles and crane; sundry wood and iron patterns; 1 platform scale.

Forge shop:
1 large air furnace; pumping engine and blowing engine; 1 horizontal engine; 1 Young America saw-mill; 1 steam hammer; 1 work-bench; 2 vices; 1 horizontal steam engine.

Up-stairs:
1 turning lathe and tools; 1 lot wood pattern, various.

Balance:
Consisting of old pieces of machinery, wrought and cast iron, old iron and old tools of various kinds laying in the yard and in the various
9 rooms.

Order of publication.

United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs. } 3380.
CLARK'S FOUNDRY, &c.

Whereas certain property described in the libel filed by the dist. att'y and now of record in this court, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest therein has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress, approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes;" and whereas the United States attorney for the eastern district of Louisiana did, on the 5th day of November, A. D. 1863, file a libel of information in this court praying the condemnation of said property and real estate, under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is therefore, on this 10th day of Nov'r, in the year of our Lord eighteen hundred and sixty-three, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 30th day of Nov'r, 1863, and show cause, if any they have, why said property and real estate and the right, title, and interest therein should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the Era newspaper twice a week previous to said 30th day of November, A. D. 1863, the first publication to be on or before the 14th instant.

New Orleans, Nov'r 10th, 1863.

(Signed) E. H. DURELL, *Judge.*

10 The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the following described property, to wit: The buildings known as Clark's Foundry, situate in the city of New Orleans, at the corner of Tchoupitoulas and Race streets, with the ground on which they stand, measuring 200 feet front on Tchoupitoulas street, more or less, by a depth of 285 feet on Race street, more or less, together with the tools and appliances belonging to said foundry, as more particularly described in the inventory marked Exhibit A, and annexed to the libel of information of the United States district attorney and now of record in this court, together with all the rights, privileges, appurtenances, and other hereditaments thereunto belonging, now li-

belled by the United States, for the causes set forth in the libel pending in the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana; that you do cite and admonish the owner or owners and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a circuit court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property sh ould not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant that you make return according to law.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 10th day of November, A. D. 1863, and the 88th year of the independence of the United States.

[SEAL.]

(Signed) F. B. VINOT, *D'y Clerk.*

11 *Marshal's return.*

Received 13th Nov., 1863. The legal requisites and preliminary of seizing the within-described property having been perfected under a writ issued from another source, proceeded to comply with the additional legal requisites by posting copies of the within warrant, libel, and judge's order on the door of the court-house, and publishing monition in the "Era," a daily newspaper, printed in New Orleans, on the 14th, 17th, 21st, 24th, 28th November, 1863, returnable 30th Nov., 1863.

(Signed) I. O. A. HOIT, *Dep. U. S. Marshal.*

12 *Intervention of Mrs. Louise A'mais Avart, wife of M. V. S. Dufossat, filed Nov.* 8, 1863.

United States circuit court for the 6th judicial circuit court and eastern district of Louisiana.

UNITED STATES *vs.* CLARK'S FOUNDRY, &c. } No. 3380.

The petition of interventor and interpleader in the above-entitled cause of Louise Almais Avart, wife of Martin Valmont Soniat Dufossat, and of the said Dufossat, who joins her for the purpose of assisting and authorizing his said wife, both of the city of New Orleans, State of Louisiana, but at present and since several years absent in the empire of France, and both loyal citizens of the United States, respectfully represents that in obedience to a warrant issued by this hon. court in the above-entitled suit, the marshal of the United States for this district has seized and taken into his
13 possession the buildings known as Clark's Foundry, situate in the city of New Orleans, on the corner of Tchoupitoulas and Race streets, with the ground on which they stand, measuring 200 hundred feet front on Tichoupitoulas street, more or less, by a depth of 285 feet on Race street, more or less, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest therein, now libelled by the United States for the reasons assigned and set forth in the libel in the above-entitled suit pending in this court, and has cited all persons having or pretending to have any right, title, and interest in and to the aforesaid property to appear before this hon'ble court to show cause why the said property should not be condemned and forfeited to the United States agreeably to the prayer of the libellants. That in answer to the said call your

petitioner, the said Louise Almais Dufossat, now comes into this hon. court and avers that on or about the 2d day of December, 1861, she sold
14 unto Messrs. John Clark, Henry Hope Stanley, and Charles Austin Eager, trading, in New Orleans, under the style of John Clark & Co., six lots of ground situated in faubourg La Course, now the first district of the city of New Orleans, designated by the Nos. one, two, three, four, five, and six, on a survey made by J. A. D'Hemecourt, deputy surveyor, dated 26th March, 1860, annexed to the act of sale, and which said lots measure in American measure as follows:

Lot No. one, 29 feet 10 inches, front on Tchoupitoulas street, 84 feet 9 inches 6 lines on Race street, 46 feet on a crooked line narrowing in the rear so as to measure only 15 feet 1 inch on the rear. Lot No. two, 23 feet 10 inches 4 lines on Tchoupitoulas street, 45 feet 8 inches on the line which separates it from lot No. three, 34 feet 4 inches on a crooked line also separating it from said lot No. 3, and narrowing in the rear so as to measure only 15 feet on the rear line. Lot No. three, 24 feet 2 inches 4 lines on Tchoupitoulas st., 78 feet 8 inches on the line dividing it from lot
15 No. 4, 45 feet 8 inches on a line dividing it from lot No. 2, 34 feet 4 inches on a crooked line dividing it also from said lot No. 2, and narrowing so that the said lot measures only 16 feet 8 inches on the rear line. Lot No. four measures 24 feet 3 inches on Tchoupitoulas street, by 78 feet 8 inches deep between parallel lines, and 24 feet 3 inches on the rear line. Lot No. five measures 24 feet 3 inches and 2 lines front on Tchoupitoulas st, by 78 feet 8 inches between parallel lines, and 24 feet 3 inches and 2 lines on the rear line. Lot No. six, 59 feet 10 inches 5 lines front on Race street, 75 feet 4 lines in depth on one side, said lot narrowing so as to measure only 31 feet 5 inches on the rear line, and measuring also 13 feet 8 inches on a line dividing it from lot No. 5, 78 feet 6 inches on a line dividing it from a common alley. *Also the said common alley,* measuring 5 feet on Race st., 4 ft. 6 inches and 4 lines on the rear line.

16 The whole is more fully described in the public act of sale, an authentic copy of which is hereto annexed as part of this petition.

Your petitioner and intervenor represents that the property aforesaid thus sold by her constitutes the greater portion of the land seized by the marshal under the warrant aforesaid.

That she effected the said sale for the price and sum of sixteen thousand dollars, of which she received one third, viz: $5,333 55⅓ cash, and for the remainder of the price the purchasers furnished her the following promissory notes viz: three certain promissory notes drawn by them jointly and *in solido* to their own order, and by them endorsed, each for the sum of $5,555 55 1-5, dated December 2d, 1861, and bearing interest at the rate of 6 per cent. per annum from date until maturity, and 8 per cent. per annum after maturity in case of non-payment as a penal clause; the said three notes being made payable at the domicil of the Louisiana State Bank respectively at one, two, and three years after date, and amounting together, exclusive of interest, to the sum of
17 ten thousand six hundred and sixty-six 66-100⅔ dollars; the said three notes being paraphed *ne varietur* by the notary before whom the act of sale was passed. That in order the more effectually to secure the payment of the said notes in capital, interest and costs, your petitioner retained a special mortgage and her vendor's lien and privilege on the property thus sold by her, and caused her said mortgage and privilege to be duly inscribed in the office of the recorder of mortgages for the city and parish of Orleans, as required by the laws of the State of Louisiana, as the whole more fully appears by the act of sale aforesaid, and the certificate thereon written.

Your petitioner and intervenor further avers that she is still the true and lawful holder of the three promissory notes aforedescribed; that one of them matured on the 5th day of December, 1862; that the other two have not as yet matured, as more fully appears by the said notes which are hereto annexed as part of this petition.

18 She further avers that neither she nor the person who acted as her agent at the time effected the sale of the property sold as aforesaid, with any intent or knowledge that the same was to be used or employed in aiding, abetting, or promoting insurrection or resistance to the laws, or any person or persons engaged therein, as set forth in the libel of the United States herein, or in any other manner whatever; that if the said property has been so used it was by parties whose acts she could not control and for whom she cannot be held responsible; that she has not by any act of commission or omission as a loyal citizen, incurred the loss or forfeiture of any of her rights herein set forth, over the property.

In consideration of the premises, your petitioner and intervenor, Louise Almais Dufossat, prays that the libel of the United States herein be dismissed as to so much of the property herein seized as aforesaid as is affected by her special mortgage and vendor's lien and privilege as aforesaid; or if this prayer cannot in law or equity be granted, that at

19 all events her rights and interest in the premises be decreed not liable to the forfeiture and condemnation herein prayed for by the libelants, and that such decree be rendered in the premises as will fully protect her rights and interest in, to, and over the property herein seized, or to its proceeds, to the full extent of her mortgage and privileged claims aforesaid, amounting to the sum of ten thousand six hundred and sixty-six 66-100 dollars, with interest as follows, viz: thirty-five hundred and fifty-five 1 5, with six per cent. interest per annum from the 2d, December, 1860, until the 5th December, 1862, and eight per cent. interest per annum from the 5th December, 1862, until paid. Thirty-five hundred and fifty-five 55-100 1-5 dollars, with six per cent. interest per annum from 2d December, 1861, until the 5th December, 1863, and eight per cent. interest per annum from the latter date until paid. Thirty-five hundred and fifty-five 55-100 1-5 dollars, with six per cent. interest per annum from the 2d December, 1861,

20 until the 5th December, 1864, and eight per cent. interest per annum from the latter date until paid; three dollars costs of act, one 50-100 dollars cost of certificate of recorder of mortgages, and all other costs. And your petitioner further prays that R. Waples, esq., district attorney of the United States for this district, be notified of this intervention, answer, and claim, and that such general and equitable relief be granted her in the premises as the nature of the case may require, and as in duty bound, &c.

(Signed) C. E. SCHMIDT,
Attorney and proctor for petitioners.

Charles E. Schmidt, attorney of the petitioners and intervenors, Louise Almais Avart, wife of Martin Valmont Soniat Dufossat, and of the said Dufossat, her husband, being duly sworn, declares that the said Louise Almais and her said husband are loyal citizens of the United States and State of Louisiana, at present absent in France, and that the allegations made

21 and facts set forth in the foregoing petition of intervention and claim are true and correct to the best of his knowledge and belief.

(Signed) C. E. SCHMIDT.

Sworn to and subscribed before me this 28th day of November, 1863.
(Signed) F. B. VINOT, *D'y Clk.*

Act of sale and notes filed on 28th Nov., 1863, with intervention of Mrs. Dufossat, and made part thereof.

STATE OF LOUISIANA,
Parish of Orleans, city of New Orleans:

Before me, Antoine Doriocourt, a notary public, duly commissioned and sworn, in and for the parish and city of New Orleans, State of Louisiana aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. Theodore Soniat
22 Dufossat, residing in the parish of Jefferson, in the State herein, acting as the agent of Mrs. Louise Almais Avart, the wife of Martin Valmont Soniat Dufossat, by virtue of a power of attorney, dated 15 May, 1857, executed before the undersigned notary, who declared that in his aforesaid capacity he does by these presents grant, sell, bargain, convey, transfer, abandon, and set over, under all lawful warranty and with substitution and subrogation to her rights and actions against all precedent vendors and owners, unto Messrs. John Clark, Henry Hope Stanley, and Charles Austin Eager, trading in New Orleans under the style of John Clark & Co., all of this city, accepting and purchasing for themselves, heirs, and assigns, all those six lots of ground situated in faubourg La Course, now the first district of this city, designated by the numbers one, two, three, four, five, and six, on a survey made by J. A. D'Hemecourt, deputy surveyor, dated 26 March, 1860, which is hereunto annexed,
23 according to which the said lots of ground measure, in American measure, as follows:

Lot No. one measures twenty-nine feet ten inches front on Tchoupitoulas street eighty-four feet nine inches six lines on Race street, forty-six feet on a crooked line, narrowing in the rear so as to measure only fifteen feet one inch in the rear.

Lot No. two measures twenty-three feet ten inches four lines on Tchoupitoulas street, forty-five feet eight inches on the line which separates it from lot No. three, thirty-four feet four inches on a crooked line, also separating it from said lot No. three, and narrowing in the rear so as to measure only fifteen feet on the rear line.

Lot No. three measures twenty-four feet two inches and four lines on Tchoupitoulas street, seventy-eight feet eight inches on the line dividing it from lot No. four, forty-five feet eight inches on a line dividing it from No. two, thirty-four feet four inches on a crooked line dividing it also from said
24 lot No. two, and narrowing so as the said lot measures only sixteen feet eight inches on the rear line.

Lot No. four measures twenty-four feet three inches on Tchoupitoulas street by seventy-eight feet eight inches deep between parallel lines, and twenty-four feet three inches on the rear line.

Lot No. five measures twenty-four feet three inches and two lines front on Tchoupitoulas street by seventy-eight feet eight inches deep between parallel lines, and twenty-four feet three inches and two lines on the rear line.

Lot No. six measures fifty-nine feet ten inches and five lines front on Race street, seventy-five feet four lines in depth on one side, said lot narrowing so as to measure only thirty-one feet five inches on the rear line, and measuring also thirteen feet eight inches on a line dividing it from lot No. five, seventy-eight feet six inches on a line dividing it from a common alley.

Also all his right, title, and interest in and to the piece of land marked on said sketch "Allee commune," and measuring five feet on Race street,
25 four feet six inches and four lines on the rear line, and which common alley had been left open on the said sketch for the exclusive use and

benefit of the said lots of ground above described, and is comprised in the present sale to be used and disposed by the present purchasers in the manner they may think proper and convenient to their interests.

The lots presently sold make part of four lots of ground designated by the numbers thirteen, fourteen, fifteen, and sixteen on a plan made by Jos. Pilie, dated 3d January, 1827, and annexed to an act passed before F. de Armas, notary public, and belonging to the present vendor by virtue of an act of partition executed before the judge of the parish of Jefferson, on the 9th of June, 1838.

All the measures and dimensions given to the said lots of ground are more or less.

This sale is made for and in consideration of the price and sum of sixteen thousand dollars, which was paid by the purchasers to the said vendor in his aforesaid capacity, and who acknowledges receipt of the same
26 in the following manner:

In cash current money of the State the sum of five thousand three hundred and thirty-three dollars and thirty-three cents and one third $5,333 33⅓

And for the remainder of the price the said purchasers have furnished the following promissory notes:

Three certain promissory notes drawn by them jointly and in solido to their own order, and by them endorsed, each for the sum of three thousand five hundred and fifty-five dollars and fifty-five cents and one-fifth, dated this day and, bearing interest at the rate of six per cent. per annum from date until maturity; in case of non-payment interest at the rate of eight per cent. per annum as a penal clause, the said three notes being made payable at the domicil of the Louisiana State Bank, and are payable respectively at one, two, and three years after date, amounting to-
27 gether to the sum of ten thousand six hundred and sixty-six dollars and sixty-six cents and two-thirds 10,666 66⅔

Making the total amount of this sale 16,000 00

The said three notes being paraphed ne varietur by the undersigned notary, to identify them with the present sale, were handed over to the said Theodore Soniat Dufossat, agent, as he acknowledges.

Now in order to secure the payment of said notes at their respective maturity, or at the expiration of whatever term of prorogation which may hereafter be agreed upon between the said purchasers and the said vendor, or the holder or holders of said notes, in capital, interest, eventual interest and cost, the said purchasers do by these presents mortgage and hypothecate, specially and with vendor's privilege, the several lots of ground sold by these presents, promising not to sell, alienate, mortgage, or incumber the same to the prejudice of these presents.

It is further agreed between the parties that the said purchasers shall cause the buildings erected on the said lots of ground to be insured
28 against fire-risks in one of the insurance companies established this city, and that the policy of insurance shall be transferred by him to the said Dufossat, agent, or to any other holder or holders of said notes or of a part of them, such transfer to be made for better securing the payment of said notes; and in case of neglect or refusal on their part to do so and to renew the policy of insurance when on the eve of expiring, any holder or holders of said notes shall have the right to cause the same to be insured at the expense of the said purchasers, (if he thinks proper to do so,) and in or-

der to guarantee such eventual advances for insurance the lots and improvements presently sold remain specially mortgaged.

From a certificate of the recorder of mortgages of the city of New Orleans, parish of Orleans, bearing date the 28th day of November, 1861, and which is hereto annexed, it appears that in the records in his office there is no other mortgage recorded in the name of Mistress Louise Almais
29 Avart, the wife of Martin Valmont Soniat Dufossat, the present vendor, and recorded against the six lots of ground above sold, than the following:

L. P. I, folio 370: The privilege in favor of the second draining district, resulting from a judgment rendered by the said district court on the ninth day of February, 1861, to secure all costs of draining of the said land.

The vendor has produced the receipts for the taxes of 1860, payable in 1861; as regards those of 1861, payable in 1862, they are to be paid by the present purchasers.

The vendor binds himself to pay only the first dividend due on the costs of draining, that is to say, the dividend payable in 1861; the others are to be paid by the purchasers.

Thus done and passed at the city of New Orleans in my office, on this second day of December, in the year one thousand eight hundred and sixty-one, in the presence of Messrs. Andre Dotremont Doriocour and Alfred Bourg, competent witnesses, who have signed with the parties and me, notary, after reading.

30 Original signed: T. Soniat, pp. John Clark; H. H. Stanley, C. A. Eager, And. D. Doriocourt, Alf. Bourg; Ant. Doriocourt, not. pub.

I do hereby certify the foregoing to be a true copy of the original on record in my office.

In faith whereof, I have affixed my hand and seal of office, at the city of New Orleans, on the 3d December, 1861.

(Signed) ANT. DORIOCOURT, *Not. Pub.*

[SEAL.]

Notes.

NEW ORLEANS, *Second December*, 1861.

One year after date we promise to pay jointly and severally in solido to the order of ourselves at the domicil of the Louisiana State Bank, the sum of three thousand five hundred and fifty-five dollars 55 1-5 cents, with interest at the rate of six per cent. per annum from date until maturity, and after maturity, in case of non-payment, with interest at the rate of eight per cent. per annum as a penal clause.

(Signed) JOHN CLARK.
(Signed) E. A. EAGER.
(Signed) H. H. STANLEY.

$3,555 55 1-5
213 33

3,768 88 1-5

Ne varietur, New Orleans, 2d December, 1861.

(Signed) ANT. DORIOCOURT, *Not. Pub.*

31 Endorsed: John Clark, H. H. Stanley, C. A. Eager, pp. V. S. Dufossat; Edmond Soniat.

NEW ORLEANS, *Second December*, 1861.

Two years after date we promise to pay jointly and in solido to the order of ourselves, at the domicil of the Louisiana State Bank, the sum of three thousand five hundred and fifty-five 55 1-5 dollars, with interest at the rate of six per cent. per annum from date until maturity, and after maturity, in case of non-payment, with interest at the rate of eight per cent. per annum as a penal clause.

(Signed) JOHN CLARK.
(Signed) C. A. EAGER.
(Signed) H. H. STANLEY.

$3,555 55 1-5
426 67

Ne varietur, New Orleans, 2d December, 1861.
(Signed) ANT. DORIOCOURT, *Not. Pub.*

Endorsed: John Clark, H. H. Stanley, pp. V. S. Duffossat; Edmond Soniat.

NEW ORLEANS, *Second December*, 1861.

Three years after date we promise to pay jointly and in solido to the order of ourselves, at the domicil of the Louisiana State Bank, the sum of three thousand five hundred and fifty-five 55 1-5 dollars with interest at
32 the rate of six per cent. per annum from date until maturity, and after maturity in case of non-payment, with interest at the rate of eight per cent. per annum as a penal clause.

(Signed) JOHN CLARK.
(Signed) C. A. EAGER.
(Signed) H. H. STANLEY.

$3,555 55 1-5
640 00

Ne varietur, New Orleans, 2d December, 1861.
(Signed) ANT. DORIOCOURT, *Not. Pub.*

Endorsed: John Clark, H. H. Stanley, C. A. Eager.

Intervention and claim of Mrs. Warner, filed Nov. 30, 1863.

In the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

THE UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } 3380.

Now into this honorable court come Mrs. Sarah Ann Warner, wife of Sewall Warner, of London, in the United Kingdom of Great Britain and Ireland, and her said husband, Sewall Warner, authorizing and assisting his said wife, by their agent and attorney in fact, S. Hopkins, jr., of New Orleans, a loyal citizen of the United States of America, and with leave of the
33 court intervene herein for the separate interest of the said Mrs. Warner in the property seized and libelled in the present case. And the said intervenor alleges and articulately propounds as follows:

First. That the said Mrs. Sarah Ann Warner, who together with her said husband are residents of London and British subjects, is the bona fide and sole proprietor and owner of the following real estate, situated in the city of New Orleans, to wit: two lots of ground, with all the improvements thereon, in suburb La Course in the first district of New Orleans and in the square bounded by Tchoupitoulas, New Levee, Race, and Orange streets, designated as lots Nos. seven and eight on a plan of H. Moellhausen of the 26th April, 1845, deposited in the office of Chas. Bondousquie, notary public. Said two lots of ground measure each twenty-six feet seven inches four lines front on Tchoupitoulas street by 127 feet ten inches five lines in depth between parallel lines, American measure, and were purchased by your petitioner by authentic act passed before Geo. Rareshide, notary public in New
34 Orleans, on the 15th December, 1857. Also one other lot of ground in the same square, designated as lot No. six on the same plan, which last-named lot measures twenty-six feet seven inches four lines front on Tchoupitoulas street by one hundred and twenty-seven feet ten inches and five lines in depth between parallel lines, and was acquired by your said intervenor Mrs. Sarah Ann Warner, together with all the buildings and improvements on the said lot, and also all the buildings and improvements on the adjoining lots Nos. 7 and 8, by act of donation *inter vivos*, duly accepted from the father of the said Sarah Ann Warner, William N. Batson, passed before Wm. J. Castell, notary public in New Orleans, on the 4th May, 1859.—Transcribed at page 134.

Second. That the three lots of ground above described, and belonging as aforesaid to your intervenor, Sarah Ann Warner, constitute a portion of the lands and buildings seized and libelled in this suit under the name of Clark's Foundry, having been leased for a term of years, together with other lots and buildings belonging to widow and heirs of William N Batson, de-
35 ceased, to Mr. John Clark, of New Orleans, as more fully set forth in the intervention, answer, and claim filed in this suit by the said widow Batson for herself and her minor children, and by your present intervenor, Mrs. Sarah Ann Warner, jointly.

Thirdly. That the three lots of ground, with the buildings and improvements thereon, above described as the separate property of your intervenor and claimant, Sarah Ann Warner, are not liable to seizure and confiscation under the act of Congress, approved the 6th August, 1861, entitled "An act to confiscate property used for insurrectionary purposes;" that your intervenor, the proprietor of the said lots and buildings, has never been charged with any crime or with any criminal design or intention against the government of the United States of America, and has never knowingly used and employed her said property in aiding, abetting, and promoting any insurrection or resistance to the laws within the provisions of the said act of Congress; that if your intervenor's lessee has misused the premises leased as aforesaid by manufacturing therein projectiles of war, and furnishing
36 materials of war for the use of the enemies of the United States, as charged in the libel of information filed herein, (but which your petitioner does not know to be true, and consequently does not admit,) such misuser of the premises cannot in law prejudice your intervenor, because the same was a departure from and violation of the lease granted by your intervenor to her said lessee for a legitimate business and a lawful purpose; because your intervenor from the month of May, 1860, to the present day has not been present in New Orleans, but has been constantly residing in a far distant country, which is at peace with the United States of America; because your intervenor neither knew of, nor consented to, the culpable and criminal acts charged, nor did she purchase, acquire, sell, or give the said property with the criminal intent charged; nor could your intervenor's

agent in New Orleans prevent the manufacturing of war materials for the use of the enemies of the United States upon the said leased premises, if any such were then manufactured; and lastly, because the
37 said act of Congress, which is a highly penal statute, cannot legally or constitutionally be strained by implication to cases which are not with'n its letter.

Fourth. That the act of Congress, approved the 6th August, 1861, entitled "An act to confiscate property and for insurrectionary purposes," was not intended to apply, neither could it constitutionally apply, to real estate, the forfeiture of which species of property by the constitution of the United States of America for treason has effect only during the life of the party convicted of treason.

Fifth. That the forfeiture of property for treason, or for any other crime, without conviction of the owner of such property upon a presentment or indictment and trial by jury, is contrary to the constitution of the United States. That the property of your intervenor could not commit a crime, and that your intervenor has never been accused nor convicted of any of the crimes charged in the libel herein against the owner, (not named,) of the property libelled; neither can your intervenor's title to the property
38 taken for public use without just compensation without a violation of the constitution of the United States.

Wherefore your intervenor prays your honor to permit this her intervention to be filed as an answer to the libel of information of the district attorney herein, and that after due proceedings the property above described may be decreed to belong to your intervenor, and may be released from seizure and restored to her, and that your intervenor may have all other relief and remedy that the nature of the case may require and this court is competent to award.

And as in duty bound, &c.

(Signed) A. M. BUCHANAN, *Proctor.*

Seaman Hopkins, jr., agent and attorney in fact of intervenor, being sworn, declares that the allegations of the above intervention are true to the best of his knowledge and belief.

(Signed) S. HOPKINS, Jr.

39 Sworn to and subscribed before me this 30th Nov., 1863.

(Signed) F. B. VINOT, *D'y Clk.*

Intervention of Mrs. Batson et al., heirs of Batson, filed Nov. 30, 1863.

In the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

THE UNITED STATES *vs.* CLARK'S FOUNDRY, &c. } No. 3380.

Now into this honorable court come Mrs. Grace Batson, widow of William N. Batson, and Mrs. Sarah Ann Warner, wife of Sewell Warner, and by him authorized hereto, both the said Mrs. Batson and Mrs. Warner represented herein by their attorney in fact undersigned, and with leave of the court intervene herein for their joint interest in the property seized and libelled in the present case. And the said intervening claimants by their said attorney in fact, S. Hopkins, junior, who is a loyal citizen of the United States, allege and articulately propound as follows:

40 First. That your intervening claimant Grace Batson is widow in community of the late William N. Batson, and the duly appointed and qualified tutrix and guardian of the minor children, issue of said mar-

riage, who, together with their sister of full age, the said Sarah Ann Warner, are the only heirs of the said late William N. Batson; and that your intervening claimant Sarah Ann Warner is likewise a child and coheir with her minor brother and sister of their father aforesaid; and that your intervening claimants both reside, as well as their respective families, in London, England, and are British subjects.

Second. That the said William N. Batson, who was a native of England, and a British subject, departed this life in London aforesaid, in the year 1859, that the said William N. Batson died possessed of the following-described property acquired by him in community with your intervening claimant Grace Batson, and which upon his demise became and still remains by the law of Louisiana the undivided property of the said intervening claimant and of her minor children under her tutorship as well as of your other intervening claimant Sarah Ann Warner, which said property is as follows, to wit: A lot of ground, with all the improvements thereon in the faubourg La Course, in the square bounded by New Levee, Race, Tchoupitoulas, and Orange streets, designated by the No. one on a plan drawn by George T. Dunbar, surveyor, dated 1st January, 1845, deposited in the office of J. B. Marks, notary public, as plan 71. Said lot of ground measures twenty-five feet front on Race street, by 169 feet 5 inches deep between parallel lines, American measure, and was purchased by the said William N. Batson from Louise A. A Dufossat by authentic act before Joseph B. Marks, notary public in New Orleans, on the 22nd day of January, 1846.—Transcribed at page 106. Also two other lots of ground, with the improvements thereon, in the first district of New Orleans, and in the square bounded by New Levee, Race, Tchoupitoulas, and Orange streets, designated as lots Nos 4 and 5 on a plan deposited in the office of Octave de Armas, notary public in New Orleans, as plan 4. These two lots of ground measure as follows: No. four, 25 feet front on Race street, by 171 feet 6 inches and 3 lines in depth on the line dividing it from lot No. 3, 105 feet 5 inches and 2 lines in depth on the line dividing it from lot No. 3, 105 feet 5 inches and 2 lines in depth on the line dividing it from lot No. 5, and 68 feet 10 inches on the rear line; No. five, 33 feet front on Race street, 105 feet 5 inches and 2 lines on the line dividing it from lot No. 4, 78 feet 7 inches and 1 line on the other line nearest to Tchoupitoulas street, and 37 feet 8 inches and 1 line in the rear, and then running 19 feet 7 inches and 7 lines also on the rear line, and which two last-described lots of ground were purchased by the said William N. Batson from the successions of David Sidle and wife by act before Octave de Armas, notary public in New Orleans, on the 13th November, 1858.—Transcribed at page 120.

41 42

Third. That your intervening claimants, represented by their attorney in fact aforesaid, leased the foregoing and above described three lots of ground, with the buildings and improvements thereon, to John Clark (together with certain other lots of ground in Tchoupitoulas street, the separate property of your intervening claimant, Sarah Ann Warner) for a term of time ending in August, 1864, to be occupied by the lessee as an iron foundry, at the rent of one hundred dollars monthly. That the premises above described constitute a portion of the land and building seized and libelled in the present case, under the name of Clark's Foundry; and that there is now due to your intervening claimants the sum of two thousand dollars for arrears of rent of the said leased premises, for which sum, as well as for the rent hereafter to become due, your intervening claimants have, by the law of Louisiana, a privileged lien and right of pledge upon all the tools, machinery, materials, and effects of every kind and description whatever in and upon the leased premises, particularly upon all the articles seized and libelled in the present action, and which are specified in [illegible] published by the U. S. marshal.

43

Fourth. That the purpose for which your intervening claimants leased their aforesaid property to the said John Clark was a lawful purpose,
44 and that, even supposing their lessee to have used the same in carrying on works forbidden by law, (which your intervenors do not, however, admit to have been done,) yet such unlawful employment was without the privity or consent of your intervenors, and ought not to deprive your intervenors of any of their rights of privilege and preference for the satisfaction o their rent out of the moveables that have been seized herein, still less to cause a forfeiture of the land and buildings above described, the property of your interven rs, who have never used and employed said property knowingly in aiding, abetting, and promoting any insurrection or resistance to the laws of the United States; that such alleged misuser of the premises leased by any other person, if established by proof, cannot prejudice or jeopardize your intervenors' rights in and upon the premises seiz d, because it would be a departure from and violation of the contract of lease granted by your intervenors for a legitimate business and a lawful purpose, because your intervenors neither knew of nor consented to the criminal acts charged, nor did they purchase, acquire, sell, or give
45 the said property with the criminal intent charged, nor could the agent of your intervenors in New Orleans prevent the manufacturing of war materials for the use of enemies of the United States upon the said leased premises, if any such were then manufactured; that your intervenors have done no act which renders their property liable to confiscation under the act of Congress approved 6th August, 1861, entitled "An act to confiscate property used for insurrectionary purposes," and the said act, which is a penal statute, should not be strained by implication to cases which are not within its letter.

Fifth. That the said act of Congress was not intended to apply, and cannot constitutionally apply, to real estate, which species of property can only be forfeited for treason during the life of the owner, convicted of treason, under the constitution of the United States.

Sixth. That the forfeiture of property for treason, or for any other crime, without conviction of the owner of such property upon a presentment or indictment, and a trial by an impartial jury of the vicinage, is in vio-
46 lation of the constitution of the United States; that the property of your intervenors could not commit a crime, and that your intervenors have never been charged nor convicted of any of the crimes or offences specified in the libel of information herein filed as having been committed by the owner (not named) of the property libelled; neither can your intervenors' title to the property above described be constitutionally divested, nor said property be constitutionally taken for public use without just compensation therefor.

Wherefore your intervenors humbly pray that this their intervention may be admitted of record as an answer to the libel of information herein filed by the district attorney, and, after due proceedings, that a decree may be rendered adjudging the property above described to be released from seizure and restored to possession of your intervenors, and for such relief and remedy as the nature of the case may require and this court is competent to award.

And, as in duty, &c., &c.

(Signed) A. M. BUCHANAN, *Proctor.*

47 Seaman Hopkins, jr., agent of intervenors, being sworn, declares that the allegations of the foregoing intervention are true to the best of his knowledge and belief.

(Signed) S. HOPKINS, Jr.

Sworn to and subscribed before me this 30th day of November, 1863.
(Signed) F. B. VINOT, *D'y Clk.*

Joint intervention of John Clark, H. H. Stanley, and C. A. Eager, filed Nov. 30th, 1863.

In the circuit court of the United States, sixth judicial circuit, and eastern district of Louisiana.

THE UNITED STATES vs. CLARK'S FOUNDRY, &c. } No. 3380.

Now into this honorable court come John Clark, Henry Hope Stanley, and Charles Austin Eager, intervening for their joint interest in the property seized herein, and allege and articulately propound as follows:

48 First. That the two first named of your intervenors are British subjects, and the last named is a loyal citizen of the United States; that your intervenors are now joint owners of all the tools, machinery, &c., comprised in the Exhibit A and the monition in this case, which said tools, machinery, &c., constitute the stock and materials of a foundry at the corner of Race and Tchoupitoulas streets, which foundry formerly was carried on by and belonged to your intervenor John Clark solely, but in which the other intervenors, Stanley and Eager, have lately taken an interest; that while the said foundry belonged to your intervenor Clark solely, and previously to the occupation of New Orleans by the army of the United States, some cannon were made by the said Clark, but not upon the premises hereinafter described. But your intervenors deny that the stock of the foundry aforesaid (tools, machinery, &c.) are liable to seizure and confiscation under the act of Congress approved 6th August, 1861, entitled "An act to confiscate property used for insurrectionary purposes;" that said

49 act of Congress, being a penal statute, should be strictly construed, and not strained by implication to cases not within its letter; that when the cannon aforesaid were made at the foundry, then carried on solely by your intervenor John Clark, the city of New Orleans was not in possession and under the *dominion* of the United States government, but was held and possessed by an authority hostile to the United States, and which authority exacted of all the inhabitants of the city obedience and submission; that the laws in force at the time in this city were not opposed to the making of such cannon, and that the portions of the tools and machinery now seized in this suit which were used and employed in making said cannon belong now to different persons, to wit, to your intervenors Stanley and Eager.

Second. That your intervenors are also joint owners of a portion of the land and building which have been seized in this case, to wit, about one hundred and twenty-six feet, more or less, on Tchoupitoulas street by

50 about 144 feet, more or less, on Race street, by a title which will be produced in due time, the remainder of the land and buildings seized herein being the property of the widow and heirs of W. N. Batson and of Mrs. Warner, who have leased the same to your intervenor John Clark. And your intervenors allege that the real estate seized is not liable to seizure and confiscation under the act of Congress of the 6th August, 1861, above mentioned, for this, that the constitution of the United States prohibits the forfeiture of more than the life estate of a person convicted of treason, and, further, for this, that real estate is not legally the subject of capture or prize; neither the personal nor the real effects seized herein come within the scope and purview of the act of Congress aforesaid.

Wherefore your intervenors pray that this their claim and answer may be filed as an answer to the libel herein; and that their property herein claimed be discharged from seizure and restored to them, and for all other and further relief.

51 (Signed) BRIGGS & BUCHANAN, *Proctors.*

John Clark, one of the intervenors, being sworn, declares that the allegations of the foregoing intervention are true.

(Signed) JOHN CLARK.

Sworn to and subscribed before me this 30th day of Nov., 1863.

(Signed) F. B. VINOT, *D'y Clk.*

Answer, replication, and exceptions by the U. S. district attorney to the bill of intervention of Louise Almais Avart and Martin Valmont Soniat Dufossat, filed January 4th, 1864.

52 UNITED STATES
ads.
LOUISE ALMAIS AVART AND MARTIN VALMONT SONIAT DUFOSSAT, intervenors in Clark's Foundry, &c. } No. 3380.

To the honorable the judges of the sixth judicial circuit court of the United States for the eastern district of Louisiana:

The answer of Rufus Waples, attorney of the United States of America for the said eastern district of Louisiana, who prosecutes herein for the United States in this behalf, to said bill of intervention exhibited by Louise Almais Avart and Martin Valmont S. Dufossat in this cause.

This defendant, Rufus Waples, attorney of the United States of America for said district, reserving to said United States all right of exception to said bill of intervention of said Louise Almais Avart and Martin Valmont S. Dufossat for answer thereto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering, saith that this defendant, attorney as aforesaid in behalf as aforesaid, expressly denies that the said intervenors, Louise Almais Avart and Martin V. S. Dufossat, are loyal citizens of the United States And the said defendant, attorney as aforesaid, expressly denies that the said property herein seized, to wit, the building known as Clark's Foundry, or the owners thereof, are entitled to the said intervenors, Louise Almais Avart and Martin Valmont Soniat Dufossat, in the sum of ten thousand six hundred and sixty-six and two thirds dollars, ($10,666 66⅔,) as erroneously alleged in said intervenors' bill of intervention. And the said defendant, attorney as aforesaid, further answering, expressly denies that the said foundry seized herein, or the owners thereof, are indebted in any amount whatever to the said intervenors, Louise Almais Avart and Martin Valmont Soniat Dufossat,

53 Further answering, this defendant, attorney as aforesaid, insists that by virtue of a certain act of Congress of the United States, approved March 3, 1863, and entitled "An act to protect the l ens upon vessels in certain cases, and for other purposes," that in all cases now or hereafter pending wherein any ship, vessel, or other property shall be condemned in any proceeding by virtue of the acts above mentioned, or of any other laws on that subject, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such ship, vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such ship, vessel, or other property, of any bona fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the

United States, intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such ship, vessel, or other property under the laws of the United States or of any loyal State thereof; provided that no such claim shall be allowed in any case where the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property; and provided also that this act shall extend to such claims only as might have been enforced specifically against such ship, vessel, or other property in any loyal State wherein such claim arose, the said intervenors, Louise Almais Avart and Martin Valmont Soniat Dufossat, are not entitled to any relief in this honorable court against the said property seized under said libel. And this defendant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statute in this cause.

54 Without this, that there is any other matter, cause, or thing in the said intervenors' bill contained material or necessary for this defendant, attorney as aforesaid, to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge and belief of this defendant, attorney as aforesaid. All of which matters or things this defendant, attorney as aforesaid, is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays that this honorable court will decree that said intervenors' bill be dismissed, with costs and charges in this behalf wrongfully sustained.

And, as in duty bound, will ever pray, etc.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the eastern district of Louisiana.

55 Filed Jan'y 4, 1864.

F. B. VINOT, *D'y Clk.*

56 *Replication.*

UNITED STATES
ads.
LOUISE ALMAIS AVART and M. V. S. DUFOSSAT, intervenors in Clark's Foundry, &c.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

The replication of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, libellant, to the answer of Louise A. Avart and Martin V. S. Dufossat, defendants, alleges that he, the said libellant, will aver, maintain, and prove his libel to be true, certain, and sufficient; and that the said answer of the said defendants is uncertain, untrue, and insufficient; and he humbly prays as in and by his said libel he
57 has already prayed.

(Signed) RUFUS WAPLES, *U. S. Dist. Att'y.*

Exceptions.

58 UNITED STATES
ads.
LOUISE ALMAIS AVART and MARTIN VALMONT SONIAT, intervenors in Clark's Foundry, &c. } No. 3380.

To the honorable the judges of the sixth judicial circuit of the United States for the eastern district of Louisiana:

This libellant, Rufus Waples, attorney of the United States of America for

the eastern district of Louisiana, who herein prosecutes for the United States in this behalf, by protestation, not confessing or acknowledging all or any of the matters and things in the said intervenors' bill to be true in such manner and form as the same are therein set forth and alleged, doth, for exceptions to said bill of intervention, allege and show, that said bill of intervention is informal and insufficient, as follows:

First exception. For that said bill and petition of intervention shows that said claimant and intervenor is a resident of the State of Louisiana, which said State is in rebellion and open resistance to the government of the United States.

59 Second exception. For that said bill and petition of said intervenor shows no specific lien on or interest in the specific property libelled in this cause that can be enforced against the United States in this cause.

Third exception. For that said intervenor, by the said petition of intervention, does not bring himself within the act of Congress of the United States, entitled "An act to protect the liens upon vessels in certain cases, and for other purposes," approved March 3, 1863, and made a part of this exception.

Fourth exception. For that said intervenor has not given a stipulation with sureties to abide by the final decree in this cause to be rendered.

60 Wherefore said Rufus Waples, attorney as aforesaid, who prosecutes as aforesaid, humbly demands whether he shall be compelled to make any further answer to said bill of intervention, or any of the matters and things therein contained, and prays that said bill of intervention be dismissed, with costs.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the eastern district of Louisiana.

61 Filed Jan'y 4, 1864. F. B. VINOT, *D'y Cl'k.*

62 *Replication and exceptions by the U. S. district attorney to the bill of intervention of Sarah Ann Warner and husband, filed January 4th, 1864.*

UNITED STATES
ads.
SARAH ANN WARNER and HUSBAND, intervenors in Clark's Foundry, &c. } No. 2380.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

The replication of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, libellant, to the answer of Sarah Ann Warner and husband, defendants, alleges that he, the said libellant, will ever maintain and prove his libel to be true, certain, and sufficient; and that the said answer of the said defendants is uncertain, untrue, and insufficient; and he humbly prays as in and by his said libel he has already prayed.

63

(Signed) RUFUS WAPLES, *U. S. Att'y.*

Exceptions.

64

UNITED STATES
ads.
SARAH ANN WARNER and HUSBAND, intervenors in Clark's Foundry, &c. } No. 3380.

To the honorable the judges of the sixth judicial circuit of the United States for the eastern district of Louisiana:

This libellant, Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who herein prosecutes for the United States

in this behalf, by protestation, not confessing or acknowledging all or any of the matters and things in the said intervenors' bill to be true in such manner and form as the same are therein set forth and alleged, doth, for exceptions to said bill of intervention, allege and show, that the said bill of intervention is informal and insufficient, as follows:

First exception. For that said bill and petition of intervention shows that said claimant and intervenors, and their agent, S. Hopkins, jr., are residents of the State of Louisiana, which said State is in rebellion and open resistance to the government of the United States.

65 Second exception. For that said bill and petition of said intervenor shows no specific lien on or interest in the specific property libelled in this cause that can be enforced against the United States in this cause

Third exception. For that said intervenor, by the said petition of intervention, does not bring himself within the act of Congress of the United States, entitled "An act to protect the liens upon vessels in certain cases, and for other purposes," approved March 3, 1863, and made a part of this exception,

Fourth exception. For that said intervenor has not given a stipulation with sureties to abide by the final decree in this cause to be rendered.

66 Wherefore said Rufus Waples, attorney as aforesaid, who prosecutes as aforesaid, humbly demands whether he shall be compelled to make any further answer to said bill of intervention, or any of the matters and things therein contained, and prays that said bill of intervention be dismissed, with costs.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the eastern district of Louisiana.

Filed Jan'y 4, 1864. F. B. VINOT, *D'y C'k.*

68 *Replication and exceptions by the U. S. district attorney to the bill of intervention of Mrs. Grace Batson, widow of Wm. N. Batson, Sarah Ann Warner and her husband, Sewell Warner, filed Jan'y 4th, 1864.*

UNITED STATES
ads.
MRS. GRACE BATSON, WIDOW OF WM. N. BATSON, SARAH Ann Warner and her husband, Sewell Warner, intervenors in Clark's Foundry, &c. } No. 3380.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana.

Libellant, to the answer of Mrs. Grace Batson, widow of Wm. N. Batson, Sarah Ann Warner, and husband, defendants, alleges that he, the said libellant, will aver, maintain, and prove his libel to be true, certain, and sufficient, and that the said answer of the said defendants is uncertain, untrue, and insufficient; and he humbly prays, as in and by his said libel he

69 has already prayed.

(Signed) RUFUS WAPLES, *U. S. Dist. Att'y.*

Exceptions.

70 UNITED STATES
ads.
MRS. GRACE BATSON, WIDOW OF WM. N. BATSON, SARAH Ann Warner, wife of Sewell Warner, and her husband, intervenors in Clark's Foundry, &c. } No. 3380.

To the honorable the judges of the sixth judicial circuit of the United States for the eastern district of Louisiana:

This libellant, Rufus Waples, attorney of the United States of America for

the eastern district of Louisiana, who herein prosecutes for the United States in this behalf, by protestation, not confessing or acknowledging all or any of the matters and things in the said intervenors' bill to be true in such manner and form as the same are therein set forth and alleged, doth, for exceptions to said bill of intervention, allege and show that said bill of intervention is informal and insufficient, as follows:

First exception. For that said bill and petition of intervention shows that said claimant and intervenors are residents of the State of Louisiana, which said State is in rebellion and open resistance to the government of the United States.

71 Second exception. For that said bill and petition of said intervenor shows no specific lien on or interest in the specific property libelled in this cause that can be enforced against the United States in this cause.

Third exception. For that said intervenor, by the said petition of intervention, does not bring himself within the act of Congress of the United States, entitled "An act to protect the liens upon vessels in certain cases, and for other purposes," approved March 3, 1863, and made a part of this exception.

Fourth exception. For that said intervenor has not given a stipulation with sureties to abide by the final decree in this cause to be rendered.

72 Wherefore said Rufus Waples, attorney as aforesaid, who prosecutes as aforesaid, humbly demands whether he shall be compelled to make any further answer to said bill of intervention, or any of the matters and things therein contained, and prays that said bill of intervention be dismissed, with costs.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the eastern district of Louisiana.

73 Filed Jan'y 4, 1864.

F. B. VINOT, *D'y Cl'k.*

74 *Replication by the U. S. district attorney to the bill of intervention of John Clark, H. H. Stanley, and Charles Austin Eager, filed January 4th,* 1864.

UNITED STATES
ads.
JOHN CLARK, H. H. STANLEY, AND CHARLES AUSTIN EAGER, intervenors in Clark's Foundry, &c. } No. 3380.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

The replication of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, libellant, to the answer of John Clark, H H. Stanley, and Ch's Austin Eager, defendants, alleges that he, the said libellant, will aver, maintain, and prove his libel to be true, certain, and sufficient, and that the said answer of the said defendants is uncertain, untrue, and insufficient, and he humbly prays as in and by his said libel he has already prayed.

(Signed) RUFUS WAPLES, *U. S. Dist. Att'y.*

75 Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana, November term, 1863.

NEW ORLEANS, *Monday, January 4th,* 1864.

Court met pursuant to adjournment.
Present: Hon. Edward H. Durell, district judge.
Absent: Hon John Catron, presiding judge.

Motion and order to amend libel.

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

On motion of the dist. att'y it is ordered that he have leave to amend the libel in this case, without re-engrossing the same, by adding thereto the description of the property as given in the conveyance office, and the allegation that said property is above the value of five hundred dollars.

Motion and order to set cause for trial.

On motion of the dist. attorney it is ordered that this cause be set
76 for trial for Tuesday, the 12th day of January, 1864, at 10 o'clock a. m., and that the parties interested be notified.

Notices of trial.

Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

You are hereby notified that this case is assigned for trial for Tuesday, the 12th day of January, A. D. 1864, at 10 o'clock a. m.

By order of court.

Witness my hand and the seal of the said court, at New Orleans, this 5th day of January, A. D. 1864.

(Signed) F. B. VINOT, *D'y Clerk.*

To A. M. BUCHANAN, Esq'r.

77 *Marshal's return.*

Rec'd January 6th, 1864, and served personally on A. M. Buchanan, esq. January 7th, 1864.

(Signed) D. CHRISTIE, *D'y U. S. Marshal.*

78 Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

You are hereby notified that this case is assigned for trial for Tuesday, the 12th day of January, A. D. 1864, at 10 o'clock a. m.

By order of court.

Witness my hand and the seal of the said court, at New Orleans, this 5th day of January, A. D. 1864.

(Signed) F. B. VINOT, *D'y Clerk.*

To C. E. SCHMIDT, Esq'r.

79 *Marshal's return.*

Rec'd Jan. 6th, 1864, and served Jan'y 7th, 1864, on C. E. Schmidt, esq., personally.

(Signed) D. CHRISTIE, *Dep. U. S. Marshal.*

80 Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

You are hereby notified that this case is assigned for trial for Tuesday, the 12th day of January, A. D. 1864, at 10 o'clock a. m.

By order of court.

Witness my hand and the seal of the said court, at New Orleans, this 5th day of January, A. D. 1864.

(Signed) F. B. VINOT, *D'y Clerk.*

To E. BRIGGS & A. M. BUCHANAN, Esq'rs.

81 *Marshal's return.*

Rec'd Jan. 6th, 1864, and served same day, personally, on E. Briggs, esq.

(Signed) JOS. S. BADGER, *D'y U. S. Marshal.*

82 *Hearing and continuance.*

NEW ORLEANS, *Tuesday, January* 12, 1864.

Court met pursuant to adjournment.

Present: Hon. Edw'd H. Durell, district judge.

Absent: Hon. John Catron, presiding judge.

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

This cause came on this day for trial. District attorney for libellants; E. Briggs, A. M. Buchanan, and C. E. Schmidt for claimants and intervenors.

And the pleadings having been read on the claim and joint intervention of John Clark, H. H. Stanley, and Charles Austin Eager, the district attorney offered in evidence the monition, precepts, and marshal's return, showing the property seized; and after hearing evidence of W. H. Nelson, Lawrence Duffy, J. R. Irwin, Hall, Th's Bowers, John Taylor, W. W. Taylor, Francis Emmett, Wm. Green, Francis Lurgess, and Thomas Dunn, sworn
83 and examined on the part of the United States, the intervenors offered in evidence—

1st. The English protection of John Clark, marked A.

2d. A certificate showing that C. A. Eager has taken the oath required by general order No. 41, marked B, (transcribed at pages 88 and 89,) and that he has presented himself to take the oath of allegiance contained in the President's proclamation, before Gen. Bowen, provost marshal general; and—

3d. Sale of property by Mrs. V. S. Dufossat to John Clark and others, marked C.—(Transcribed at page 21.)

The case was then argued on both sides, and it was agreed between all the parties that the evidence heard this day be admitted as having been received between the United States and the intervenors, on the trial of all the interventions on their merits, and the court thereupon ordered that this cause be continued and that the exceptions filed be tried to-morrow, 13th inst., at 12 m.

84 *Evidence, precept, and marshal's return.*

OFFICE OF U. S DISTRICT ATTORNEY,
New Orleans, La., October 23d, 1863.

To the marshal of the eastern district of Louisiana:

In compliance with general instructions, issued by the Attorney General under the act of July 17th, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," I have to direct that you seize the building known as Clark's Foundry, situated on the corner of Tchoupitoulas and Race streets, measuring 200 feet, more or less, on Tchoupitoulas street, by 285 feet, more or less, on Race street, with a warehouse on the east side, and a fire engine-house on the south side of said building, together with the shops, tools, and other appliances in the said foundry, and the ground on which it stands, as proceedings are to be instituted to secure the condemnation of the same to the use of the United States, under the above act.

85 You will report the seizure to me when the same shall have been made.

(Signed) RUFUS WAPLES, *U. S. Attorney.*

Marshal's return, received 24th October, 1863.

Pursuant to the within precept, repaired to the said foundry, within described, seized the same, took an inventory of the shops, tools, and other appliances therein, which is hereto attached, served notice of seizure on John Clark in person, and appointed Hugh McGlone and Thos. Murphy, keepers.

(Signed) JAS. GRAHAM, *U. S. Marshal.*

A.—English protection of John Clark.

HER BRITANNIC MAJESTY'S CONSULATE FOR THE STATE OF LOUISIANA.

Know all persons to whom these presents shall come that I, George Coppell, esq., her Britannic Majesty's acting consul for the city of New Orleans and State of Louisiana, do hereby certify that Mr. John Clark, whose

87 signature is hereunto attached, is a native of Yorkshire, England, and subject of Great Britain, and is entitled to protection from all powers friendly to her Britannic Majesty.

(Signed) JOHN CLARK.

Given under my hand and seal of office, at the city of New Orleans, in the State of Louisiana, the United States of America, the twentieth (20th) day of March, one thousand eight hundred and sixty-two.

(Signed) GEORGE COPPELL,
[SEAL.] *Her B. M. Act'g Consul.*

NEW ORLEANS, *Wednesday January 13th,* 1864.

Court met pursuant to adjournment.
Present: Hon. Edw. H. Durell, dist. judge.
Absent: Hon. John Catron, presiding judge.

Motion and order to withdraw certificate of oath of Eager, offered and filed in evidence on the 12th January, 1864.

UNITED STATES
vs. } No. 3380.
CLARK'S FOUNDRY, &C.

On motion of A. M. Buchanan, esq., of counsel for Charles A. Eager,

88 and on suggesting to the court that the certificate of said Eager's having taken the oath required by military order No 41, which was offered in evidence and filed in this cause yesterday, is a document indispensable to said Eager in the daily prosecution of his business, and the district att'y being present and consenting, it is ordered by the court that the clerk of the court deliver the said certificate to said Eager, after making a copy of the same and of the endorsement of Gen'l Bowen, provost marshal general, thereupon, which is also in evidence, said copies to remain of record in the place of the originals.

B.—Copies.

UNITED STATES OF AMERICA, DEPARTMENT OF THE GULF,
New Orleans, September 22d, 1862.

C. A. Eager has taken and subscribed the oath required by general order No. 41, for a citizen of the United States.

(Signed) J. F. MILLER,
Ass't Adj't General.

89 C. A. Eager has this day presented himself to take the oath of allegiance contained in the President's proclamation, published in the newspapers.

January 12th.

(Signed) J. BOWEN, *P. M., B. G.*

I hereby certify the foregoing to be a true copy of a certificate and endorsement on the same, filed and offered in evidence on the 12th day of January, 1864, in the case of the United States *vs.* Clark's Foundry, No. 3380, said copies to remain of record in the place of the originals delivered to C. A. Eager, by order of court, on the 13th day of January, 1864.

(Signed) CH'S CLAIBORNE, *Clerk.*

Order granted to file Eager's oath.

UNITED STATES
vs.
CLARK'S FOUNDRY, &C. } 3380.

With leave of court, in open court, and in the presence of the district attorney, A. M. Buchanan, esq., of counsel for C. A Eager, presented
90 and filed in this cause the certificate of said Eager's having taken the oath under the proclamation of the President of the United States of the 8th December, 1863, and its registry in the district court of the United States for this district.

Oath of C. A. Eager, filed January 13th, 1864.

CLERK'S OFFICE U. S. DISTRICT COURT,
Eastern District of Louisiana, New Orleans, Jan'y 12, 1864.

This is to certify that Charles A. Eager did, on the 12th January, 1864, take and subscribe the oath prescribed by the President's proclamation of December 8th, 1863, and that the same is registered in this office for permanent preservation, bearing the number 31.

[SEAL.] (Signed) K. LOEW, *D'y Clerk.*

Hearing and submission of exceptions.

UNITED STATES
vs.
CLARK'S FOUNDRY, &C. } 3380.

The exceptions herein filed came on to be heard. District attorney for

libellants, A. M. Buchanan and C. E. Schmidt for claimants and inter-
91 venors. Offered in evidence, on the part of all the claimants and intervenors—

1st. The proclamation of the President of the United States of the 8th December, 1863.

2d. The proclamation of Gen'l Banks organizing State government, of January 11th, 1864.

3d. General order No. 39 issued by General Shepley, military governor, on the 24th December, 1863, in relation to the same proclamation of the President.

The exceptions, after having been argued, were submitted to the court, and taken under advisement.

(The documents offered in evidence have not been produced to be filed.)

Order continuance of cause.

UNITED STATES
vs.
CLARK'S FOUNDRY, &C. } No. 3380.

On motion of counsel for the claimants and intervenors, and of the district attorney, it is ordered that this cause be continued to Friday, January
92 22d, 1864.

Cause resumed and continued.

NEW ORLEANS, *Friday, January 22d*, 1864.

Court met pursuant to adjournment.
Present: Hon. Edw. H. Durell, dist. judge.
Absent: Hon. John Catron, presiding judge.

UNITED STATES
vs.
CLARK'S FOUNDRY, &C. } No. 3380.

This cause was resumed. District attorney appearing for libellants and Messrs. Rozier, Buchanan, Briggs, and Schmidt for claimants and intervenors; and having partially heard the arguments of counsel, and after the examination of witnesses and the introduction of documents in evidence, it was ordered by the court that the same be continued until to-morrow, at 10 o'clock a. m.

Evidence.

Mr. Rozier, on the part of Eager, offerded in evidence:

1st. The President's proclamation of 8th Dec'r, 1863, as published
93 in the official journal, (not produced to be filed)

2d. Certificate of oath taken by Eager, marked No. 3.—(Transcribed at page 90.)

3d. Original oath taken Sept'r 22d, 1862, by Eager, marked B.—(Transcribed at page 88.)

4th. Plea of pardon and amnesty, filed January 22d, 1864.

Sixth judicial circuit of United States in and for the eastern district of Louisiana.

UNITED STATES
vs.
CLARK'S FOUNDRY. } No. 3388.

And now comes Charles A. Eager protesting and denying that he has ever

been guilty of any offence, matter or thing set forth in the libel of information, in the said entitled proceedings of the United States against Clark's Foundry; and articulates and says that on the twelfth day of January, in the year eighteen hundred and sixty four, the said Eager availed himself and took the benefit of the proclamation of the President of the United
94 States of America, dated on the eighth day of December, 1863, and of the pardon and amnesty extended under and by said proclamation; that on the said eighth day of January, A. D. 1863, he took and subscribed to the oath required and inserted in said proclamation, and of the tenor and effect therein contained, and that he has kept and maintained said oath inviolate.—(Oath transcribed at page 90.) And further, the said Eager articulates and says that on the 22d day of September, in the year 1862, he took and subscribed an oath of allegiance to the government of the United States of America, and swore to support, protect, and defend the constitution of the United States, and that he took the oath, and subscribed the same, as required by the order No. 41 of Major General B. F. Butler, then commanding the gulf department; that the said Eager has been pardoned and remitted of all and singular informations, indictments, and of all pains and penalties, forfeitures, demands, or other punishments whatever which he may have incurred or been
95 subject to for or by reason of any act or offence defined in the said acts of Congress—one entitled an "Act to confiscate property for insurrectionary purposes," approved Aug. 6, 1861, and the other "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate property of rebels, and further purposes," approved July 17, 1862; and the said Eager alleges, articulates, and says that, by the said proclamation of the President of the United States, he (the said President) has pardoned and admitted the said Eager from all pains, penalties, and forfeitures set forth in said acts of Congress; by reason of which said pardon and amnesty the said Eager prays judgment that he may be dismissed and discharged by the court from the premises aforesaid, and that his said property be restored to him.

(Signed) J. AD. ROZIER, *Att'y.*
A. M. BUCHANAN, *of Counsel.*

96 *Demurrer to plea, filed January 22d, 1864, and offered in evidence by the U. S. dist. att'y.*

UNITED STATES *ads.* CLARK'S FOUNDRY, &c. } 3380.—Pending in the U. S. circuit court for eastern dist. of Louisiana.

To the honorable the judges of the sixth judicial circuit of the United States setting in and for the eastern district of Louisiana:

And the said libellant, by Rufus Waples, U. S. district att'y, as to the plea of the said defendant Charles A. Eager, by him above pleaded, saith that the said plea, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, said libellant, from having or maintaining his aforesaid *active* thereof against said Eager, said defendant; and that said libellant is not bound by law to answer the same; and this said libellant is ready to verify.
97 Wherefore, for want of sufficient plea in this behalf, he, said libellant, prays judgment, &c., and that said defendant, Eager, may further answer thereto.

(Signed) RUFUS WAPLES, *U. S. Dist Att'y.*

Also offered in evidence by the U. S. dist. att'y the proclamations of the

President of the United States of America of April 15th and Aug. 16th, 1861. Not produced to be filed.

A. M. Buchanan, esq., offered in evidence—

1st. On behalf of all the claimants and intervenors, proclamation of the President of the United States of 1st January, 1863, to be found at page 1268 of the 12th vol. U. S. Statutes at Large.

2d. On the part of Mrs. Batson, tutrix, and heirs of Batson, and of Mrs. Warner, intervenors.

Letters of tutorship granted to Mrs. Batson, filed 22d January, 1864.

98 THE STATE OF LOUISIANA,
Second district court of New Orleans:

This shall certify, to all whom it may concern, that on the 22d day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and the 84th of the independence of the United States of America, an application was made to the honorable judge of the second district court of New Orleans by Grace Baker, widow of William N. Batson, praying she might be admitted to take her oath as natural tutrix of her minor children, Sarah Ann, William Payne, W. Mary Edwards, Adda Louise, and Joseph Allain Batson, born of her marriage with William N. Batson.

Now know ye that the said Grace Baker, widow of William N. Batson, has been confirmed as natural tutrix of her minor children, above named, has on the 22d day of November, 1859, taken her said oath as such agreeably to law.

Witness our hands and the seal of the said second district court of
99 New Orleans this 23d day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and the 84th of the independence of the United States of America.

[SEAL.] (Signed) P. H. MORGAN, *Judge.*
(Signed) O. MOREL, *D'y Clk.*

A true copy.
(Signed) A. MOREL, *D'y Clk.*

Power of attorney of Mrs. Grace Batson to Seaman Hopkins, jr., filed Jan'y 22d, 1864.

UNITED STATES OF AMERICA,
State of Louisiana, city of New Orleans:

By this instrument of procuration be it known that on this third day of May, in the year of our Lord one thousand eight hundred and sixty, and eighty-fourth of the independence of the United States of America,
100 before me, William Joseph Castell, a notary public in and for the city and parish of New Orleans, and State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereafter named and undersigned, personally came and appeared Mistress Grace Baker, of this city, widow of the late William N. Batson, who declared that she had made and appointed, and does by these presents make, nominate, ordain, authorise, constitute, and appoint, and in her place and stead depute and put, Seaman Hopkins, jr., esq., of this city, to be her true and lawful attorney in fact, general and special, giving and by these presents granting unto the said attorney full power and authority for her in her name and behalf, and to her use to conduct, manage, and transact all and singular her affairs, business, and concerns in New Orleans of whatsoever nature and kind without exception or reservation whatsoever; to open all letters of correspondence ad-

dressed to her, and to answer the same; to make and endorse pro-
101 missory notes in her name, and draw, endorse, and accept bills of exchange; to make checks and draw money out of any bank wherein the same may have been deposited in the name or for account of constituent; to deposit drafts, bills of exchange, acceptances, and promissory notes, or other obligations for collection in any bank, and withdraw the same, or the amount thereof, at pleasure by check or otherwise; to sell and transfer all or any shares of the capital stock of any bank or other corporate body owned by the said constituent, and receive and receipt for the dividends due or to become due thereon; to pledge and pawn all or any shares of the capital stock of any bank or other corporate body owned by the said constituent, and to make and give any note or notes which may be necessary from time to time for the renewal of the same; to attend all or any meetings of creditors wherein the said constituent may be interested, and vote in her name on all questions and cases that may be submitted; to attend all or any meetings of the stockholders of any bank or other corporate body
102 wherein the said constituent may be interested, and vote in her name on all questions and cases that shall or may be submitted; to borrow money from any bank or other monied institution on the notes or obligations of the said constituent or those of others which shall or may come into the said attorney's hands for her use, and make other notes or obligations from time to time for the renewal of all such or any part or parts of real, personal, or mixed estate of the said constituent, and to lease, let, or hire all or any of her houses, property, and slaves, and receive and receipt for the rent and wages thereof as the same shall fall due; and for the full execution of the purposes aforesaid, to make, sign, and execute, in the name of the said constituent, all acts, whether of sale, mortgage, lease, release, contract, covenant, compromise, deed, agreement, or otherwise, that shall or may be requisite and necessary, and bind himself thereby as firmly as if the same were or had been her own proper acts and deeds; to sign all bonds or other
103 acts required by the revenue department at the custom-house of this district or elsewhere, and do all custom-house business whatsoever; to receive and attend to all shipments or consignments of produce, goods, wares, or merchandise that shall or may be made to her, either for her own account and risk, or that of others, and to pursue the instructions of the owners, shippers, or others interested therein relative thereto; to receive and acknowledge notices of protest of all or any bills, drafts, or promissory notes to which the said constituent may be a party, and to act for the said constituent, and be her substitute in all cases wherein she may be appointed the agent or attorney of others; and to ask, demand, have, take, and by all lawful means to recover and receive of and from all and every person or persons whomsoever, body or bodies corporate, all and every such sum or sums of money, goods, debts, property, and effects whatsoever, as now is or are or may hereafter be in his, her, or their custody or possession due, owing, coming, or belonging to her, the said constituent, whether by bond, bill, note,
104 book-debt, account, consignment, bequest, or for and by what other reason and means soever; and to that end with whom it may concern to adjust and settle all accounts, and upon recovery and receipt in the premises, to make and give good and sufficient discharges and acquittances; to appear before all courts of law and equity, there to do and prosecute and defend as occasion shall require, or to compromise, compound, and agree in the premises, by arbitration or otherwise, as the said attorney shall in his discretion think fit; also empowering said attorney to attend to all matters and things relating to the succession of the late William N. Batson. And generally to do and perform all and every other act, matter, and thing whatsoever as shall or may be requisite and necessary, touching and con-

cerning the affairs, business, and concerns of the said Mrs. Batson, as fully, amply, and effectually, and to all intents and purposes, with the same validity, as if all and every such act, matter, or thing were or had
105 been herein particularly stated, expressed, and especially provided for, as she, the said Mrs. Batson, could or might do if personally present; also, with full power of substitution and revocation, the said constituent hereby agreeing to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this act of procuration.

Thus done and passed at New Orleans, the day and year aforesaid, in the presence of William R. Murphy and Alfred Bouligny, witnesses hereto required and residing in this city, who have signed these presents with the said appearer and me, notary, after reading of the act.

(Signed) MRS. GRACE BATSON

W. R. MURPHY.

ALFRED BOULIGNY.

W. J. CASTELL, *Not. Pub.*

I certify the above and foregoing to be a true copy of the original act extant in my office.

In faith whereof, I grant these presents under my signature and the impress of my seal of office.

New Orleans, June 23, 1860.

(Signed) W. J. CASTELL, *Not. Pub.*

106 *Lease, by Seaman Hopkins, jr., ag't, to John Clark, filed Jan'y* 22, 1864.

STATE OF LOUISIANA,

Parish of Orleans, city of New Orleans:

Be it known that on this eleventh day of March, in the year of our Lord one thousand eight hundred and sixty-two, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Seaman Hopkins, jr., esq., of this city, herein acting in his capacity of attorney in fact of—

1st. Mrs. Grace Baker, as the widow in community of the late William N. Batson, and separately as the tutrix of her minor children, agreeably to two certain powers of attorney passed before the undersigned notary under date of the third of May, eighteen hundred and sixty.

107 2d. Of Mrs. Sarah Ann Batson, wife of Sewal Warner, esq., and by him duly authorized, also by act of procuration passed before the undersigned notary, under date of the third day of May, eighteen hundred and sixty; the said Mrs. Grace Batson and the said Mrs. and Mr. Warner being at present residing at London, England.

Which appearer declared that, acting as aforesaid, he does by these presents let and lease unto John Clark, esq., also of this city, present, accepting and lessee for himself and his heirs, commencing on the first day of February, 1862, and ending on the thirty-first day of August, 1864, the iron foundry on Tchoupitoulas street through to Race street, such as the whole now stands; the said lessee, having a perfect knowledge of the said premises, dispenses with enumerating them more fully in this act. This lease is made and accepted for and in consideration of the monthly rent of one hundred dollars, which rent said lessee binds himself punctually to pay with
108 the authorized agent of the said Mrs. Batson and Mrs. Warner on the first day of each and every month during the continuance of this lease. The said lessee binds himself to keep the buildings and premises

generally in good order, put nothing thereon that would forfeit the insurance, and to make no sub-lease without the written consent of the lessors, who reserve to themselves the right of annuling this lease in case the said lessee should at any time fail to pay the rent as stipulated, or shall otherwise violate this contract; and said lessee hereby obligates himself to deliver up and return the same at the expiration of the present lease, with all the fastenings and appurtenances in equal good order. The privies are to be cleaned at the expense of the lessee.

This done and passed at my office at New Orleans aforesaid, the day, month, and year first above written, in the presence of Thomas J.
109 Castell and James N. Gray, witnesses of lawful age, domiciliated in this city, who hereunto sign their names with the parties and me, the said notary, after the reading of these presents.

(Signed) JOHN CLARK.
T. J. CASTELL. S. HOPKINS, JR.
JAMES N. GRAY.
W. J. CASTELL, *Not. Pub.*

The foregoing is a true copy of the original act extant in the registers of William Joseph Castell, late notary public, which are in my possession and custody as his successor in office.

[SEAL.] New Orleans, January 9th, 1864.
(Signed) FELIX McCULLOCH, *Notary Public.*

Sale of property by Mrs. Dufossat to Wm. N. Batson, filed Jan'y 22d, 1864.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that this day, before me, Joseph Benzaken Marks, a
110 notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, personally came and appeared Mrs. Louise Almais Avart, wife of lawful age of Valmont Soniat Dufossat, of the parish of Jefferson, in this State, with him separated of property, by decree of the honorable the parish court for this city and parish of New Orleans, bearing date the twelfth of December, 1842, and by her said husband herein duly authorized and assisted, who declared that for the consideration of one thousand dollars to her paid in ready money, the receipt whereof is hereby acknowledged, acquittance granted therefore, she does, by these presents grant, bargain, sell, convey, transfer, assign and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto Mr. William Nicholas Batson, of this city, here present, accepting and purchasing for himself, his heirs, and assigns, and acknowledging delivery
111 and possession thereof, a certain lot of ground, together with all the improvements thereon, rights, ways, privileges, and advantages thereunto belonging, in any way appertaining, situated in faubourg Lacourse, of this city, in the square bounded by New Levee, Race, Tchoupitoulas, and Orange streets, and designated by the number one on a plan drawn by George T. Dunbar, surveyor of municipality of this city, under date of the 1st January, 1845, and deposited as plan No. 71 in the book of plans of the undersigned notary; said lot measuring twenty-five feet front on Race street by one hundred and fifty-nine feet and five lines in depth, between parallel lines, American measure, which lot makes part of lot No. 16, as per plan drawn by Joseph Pilie, then city surveyor, on the 3d January, 1827, and annexed to an act passed before Felix de Armas, late a notary in this city, on the 16th day of the same month and year; which

property was acquired by the present vendor (with other property)
112 in the manner set forth in an act of partition between her and the widow and heirs of the late Francois Robert Avart, passed before T. S E. Dugue Livaudais, parish judge and *ex officio* notary public for the parish of Jefferson, on the 9th day of June, 1838. To have and to hold the said property and appurtenances unto the said purchasers, heirs, and assigns, to their proper use and behoof forever; and the said vendor, for herself, her heirs, and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever, by these presents; and the said vendor does, moreover, subrogate the said purchaser to all the rights and actions of warranty which she has or may have against her own vendor, or against the vendors of her vendor, fully authorizing the said purchaser to exercise the said rights and actions in the same manner as she herself might or could have done.

By reference to the annexed certificate of the recorder of mortgages for this city and parish, dated this day, it appears that the property
113 herein conveyed is free from incumbrance in the name of the present vendor.

Thus done and passed in my office, in the city of New Orleans aforesaid, in the presence of Theophile Commagere and Alexandre L. Trouard, witnesses of lawful age and domiciliated in this city, who hereunto sign their names, together with the said parties and me, the said notary, on this twenty-second day of January, in the year one thousand eight hundred and forty-six.

(Signed) W. N. BATSON.
ALMAIS SONIAT DUFOSSAT.
VALMONT DUFOSSAT.

T. COMMAGIRE.
A. L. TROUARD.
J. B. MARKS, *Not. Pub.*

I, register of conveyances, certify that the present act has been this day recorded in my office in book No. 39, fol. 390.

New Orleans, 26th January, 1846.

(Signed) T. MELY, *D'y Reg'r Conv.*

The foregoing is a true copy of an act extant from the register of Joseph Benzaken Marks, late notary public, and in my possession and custody as his successor in office.

114 [SEAL.] New Orleans, 9th January, 1864.
FELIX McCULLOCH, *Notary Public.*

Sale of property by Samuel Smith to Miss Sarah A. Batson, filed January 22d, 1864.

STATE OF LOUISIANA,
City and parish of New Orleans:

Be it known that on this fifteenth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-second, before me, George Rareshide, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared Samuel Smith, of this city, who declared that for and in consideration of the sum and price of eighteen hundred dollars, to him in hand well and truly paid in ready money in the presence of the undersigned notary and witnesses, the receipt
115 whereof is hereby acknowledged, he does, by these presents, grant, bargain, sell, and deliver, with full guarantee against all debts, liens,

mortgages, suits, evictions, and encumbrances whatever, unto Miss Sarah A. Batson, minor child above the age of puberty of William N. Batson, also of this city, herein represented by her said father, present, accepting and purchasing for his said minor child, her heirs and assigns, and acknowledging delivery and possession thereof, all and singular two certain lots of ground, together with all the improvements thereon, rights, privileges, cusdons, servitudes, ways, and appurtenances thereunto belonging, or in anywise appertaining, situate in the suburb La Course, first district of this city, in the square comprised within Tchoupitoulas, New Levee, Race, and Orange streets, and designated by the Nos. seven and eight, on a plan drawn by H. Moolhausen, surveyor, dated the 26th day of April, 1845, and deposited in the office of Charles Boudousquie, notary. Said lots measure, each, twenty-six feet seven inches and four lines front on Tchoupitoulas street,
116 by one hundred and twenty-seven feet ten inches five and a half lines in depth, between parallel lines, American measure; being the same property purchased by the present vendor from David Akin by an act passed before the said Charles Boudousquie, notary, on the seventeenth day of June, 1845. To have and to hold the said property, rights, privileges, &c., unto the said purchaser, her heirs and assigns forever. And the said vendor hereby further promises that he will, and his heirs shall and will, forever warrant and defend the said property herein conveyed against all legal claims and demands whatever. The said vendor moreover transfers unto the said purchaser all the rights and actions of warranty to which he is or may be entitled, against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said rights, and actions, to be by her enjoyed and exercised in the same manner as they might have been by the present vendor himself.

117 By reference to the annexed certificate from the recorder of mortgages for this city and parish, dated this day, it will appear that said property is free and clear of all incumbrances in the name of the present vendor. The taxes on said property for the year 1856 have been duly paid, and the receipt exhibited to me, notary. Those for the present year (1857) as well as all other taxes due on said property, the present vendor binds himself to pay, so soon as the tax bills are made out.

And now to these presents personally came and appeared Mistress Adele Casey, of lawful age, wife of said Samuel Smith, who did declare unto me, notary, that it is her wish and intention to release in favor of the said purchaser, her heirs and assigns, the property herein described from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or other privileges to which she may be entitled, whether by virtue of her marriage with her said husband, or otherwise. Whereupon, I, the
118 said notary, did inform the said wife, verbally, apart and out of the presence and hearing of her said husband, that she had by law a legal mortgage on the property of her said husband: First, for the restitution of her dowry, and for the re-investment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage; secondly, for the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected; thirdly, for nuptial presents; fourthly, for debts by her contracted with her said husband; and fifthly, for the amount of her paraphernal property alienated by her and received by her said husband, or otherwise disposed of for the individual interest of her said husband. And the said wife did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, para-
119 phernal and other rights and privileges thus secured to her by law on the property of her said husband, and that, availing herself of the

rights secured to her by the second section of an act passed by the legislature of this State, authorizing wives to make valid renunciations, &c., approved on the 27th day of March, 1835, she nevertheless did persist in her intention of renouncing, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others, of any kind or nature whatever, to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Samuel Smith, being now present, aiding and authorizing said Mrs. Smith in the execution of these presents, she, the said Mrs. Smith, she did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges in favor of the said purchaser, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus done and passed in my office, at the said city of New Orleans,
120 in the presence of Edward G. Stewart and William H. Latham, witness of lawful age and domiciliated in this city, who hereunto sign their names, together with the said parties and me, the said notary, on this fifteenth day of December, in the year of our Lord one thousand eight hundred and fifty seven.

(Signed) SAM. SMITH.
(Signed) ADELE SMITH.
(Signed) WM. N. BATSON.

EDW'D G. STEWART.
WM. H. LATHAM.
G. RARESHIDE, *Not. Pub.*

The foregoing is a true copy of the original act extant in the register of George Rareshide, late notary public, which are in my possession and custody as his successor in office.

New Orleans, January 9th, 1864.

[SEAL] (Signed) FELIX McCULLOCH, *Notary Public.*

Sale of property by succ'r of D. Sidle to Wm. N. Batson, filed Jan'y 22d, 1864.

121 STATE OF LOUISIANA, *city of New Orleans:*

Be it known that on this thirtieth day of November, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States of America the 83d, before me, Octave de Armas, notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared:

1st. Mrs. Henrietta Sidle, wife of John Davidson, and by him duly assisted and authorized.

2d. Mrs. Amelia Sidle, wife of George Price, and by him duly assisted and authorized.

3d. Mr. Samuel Sidle.

4th. Mr. Edward A. Bradford, of the firm of Benjamin, Bradford & Finney, of this city, attorneys-at-law, herein acting on behalf and as the attorney in fact of Robert L. Smith, of Memphis, Tenn., guardian of the minor
122 Joseph D. Sidle, as per procuration, in due form, dated the 22d September, 1858, annexed for reference to another act of even date herewith in this office.

5th. Messrs. John Davidson and James C. Davidson, subrogated, the first to the rights of the late Edwin Sidle, and also of the late Gertrude Sidle, deceased, wife of Warren H. Grice, and the second to the rights of the said Samuel Sidle in the succession of their mother, Harriet French, dec'd, wife

of David Sidle, also deceased, as per three acts of conveyance, two in favor of the said Jno. Davidson, from the succession of Gertrude Grice and Edwin Sidle, passed before E. L. Lewis, notary, the 24th December, 1852, and 16th August, 1854, and the third in favor of the said J. C. Davidson from the estate of Samuel Sidle, passed the 18th June, 1858, before the sheriff of this parish.

All which said appearers are residents of this city, and the said Henrietta Davidson, Amelia Price, Joseph D. Sidle, by representation of his
123 father, the late Joseph Sidle, Samuel Sidle, John Davidson, by representation of the said late Edwin Sidle, and of Gertrude Grice and James C. Davidson, by representation of Samuel Sidle, are the sole heirs or the only interested parties, the four first named for one fourth each, in and to the succession of the late David Sidle, their father and grandfather, and the three first named, one for one sixth each, together with the said John Davidson, representing, as aforesaid, two sixths, and James C. Davidson representing one sixth in and to the succession of the late Henrietta Sidle, deceased, wife of the said David Sidle, which said succession have been regularly opened in the second district court of this city, (No. 3154 and 14388 of the docket of said court.) The said Mrs. Henrietta Davidson and Samuel Sidle herein acting as beneficiary heirs of their said deceased father and mother.

And the said appearers declared that in pursuance and in conformation of the adjudication made to William N. Batson, at a public sale made
124 on the 13th November instant, at 12 o'clock m., at Banks's Arcade, in this city, by Norbert Vignie, duly licensed auctioneer, in obedience to a decree of the said second district court, dated the 8th September, 1858, in the suit for a partition, entitled "Mrs. Henrietta Davidson and others *vs.* Mrs. Amelia Price and others," (No. 14450 of the docket of said court;) and also to an order of said court, rendered in said suit on the 15th of the same month, as the whole appears by the process verbal of said auctioneer, annexed to an act of even date herewith in this office.

They, the said appearers, in their respective capacities aforesaid, do by these presents sell, convey, assign, transfer, and set over, with all legal warranties, and with subrogation to all the rights of action warranty, which they have or might have which the said late David Sidle and wife had against all proceedings, vendors, or proprietors, unto the said William N. Batson, hereto present and accepting, purchasing for himself, his
125 heirs, and assigns, and acknowledging due possession thereof, two certain lots of ground, with all and singular the buildings and improvements thereon, rights, ways, privileges, servitudes thereunto attached or in anywise appertaining, situate in the first district of this city, in the square bounded by Race, Tchoupitoulas, Orange, and Levee streets, designated by the Nos four and five on a plan deposited this day in this office under the No. 4 paraphed, (ne varietur,) by me, notary, on the 11th September, 1858, estate of David Sidle and wife, which lots of ground measure as follows, to wit: Lot No. four measures twenty-five feet front on Race street, one hundred and seventy-one feet six inches and three lines in depth on the line dividing it from lot No. three, and one hundred and five feet five inches and 2 lines in depth on the line dividing it from lot No. five, and sixty-eight feet two inches on the rear line; and lot No. five measures thirty-three feet front on Race street, one hundred and five feet five inches and two lines in
126 depth on the line dividing it from lot No four, seventy-eight feet and one line in depth on the other line nearest to Tchoupitoulas street, and thirty-seven feet eight inches and one line in the rear line, and then running nineteen feet seven inches and seven lines also on the rear line. Which property was acquired by the said late David Sidle during his marriage with the said late Henrietta French Sidle by purchase from Mrs. N. S. Dufossat, per act passed before J. B. Marks, notary, on the 23d day of April, 1847. And that at the death of the said Henrietta Sidle, A. D. 1850, her un-

divided moiety thereon, devolved by inheritance to her six children, Henrietta Davidson, Amelia Price, Joseph Sidle, Edwin Sidle, Gertrude Grice, and Samuel Sidle, the three four last-named persons being now represented as aforesaid, and the other moiety, at the death of the said David Sidle, A. D. 1858, devolved to his three children, Henrietta Davidson, Amelia Price, Samuel Sidle, and his grandson, Joseph D. Sidle, for one fourth each.

127 This sale, pursuant to the adjudication at auction aforesaid, is made and accepted for and in consideration of the total sum of twenty-five hundred and fifty dollars, ($2,550,) say, $1,275 for each of said lots. And, agreeable to the terms and conditions of the said sale at auction, the said purchaser has presently paid cash in ready money the sum of six hundred and thirty-seven dollars and fifty cents, ($637 50,) being one fourth of the price, to the said vendors, who hereby acknowledge the receipt thereof and grant acquittance and discharge thereof. And for the balance of the price, say $1,912 50, the said purchaser, in order to accommodate the vendors, has subscribed to his own order and has endorsed eighteen coupons of notes, all dated the 13th of November, 1858, being the date of said sale at auction, nine whereof are each of the sum of one hundred and thirty-two dollars and eighty-one and $\frac{1}{4}$ cents, ($132 81$\frac{1}{4}$;) three others are each of one hundred and six dollars and twenty-five cents, ($106 25;) three others are each of seventy-nine dollars 68$\frac{3}{4}$ cents, ($79 68$\frac{3}{4}$;) and the three last are

128 each of fifty-three dollars twelve and a half cents, ($53 12$\frac{1}{2}$.) forming together three series of notes equal in number and amount, payable in six, twelve, and eighteen months from date, bearing interest at the rate of 6 per cent. per annum from date to maturity, at 8 per cent. per annum after maturity until paid. Which notes, after having been signed and paraphed, ne varietur, by me, notary, in order to identify them with these presents, were delivered to the said vendor, who hereby acknowledged the receipt thereof. In order to secure the punctual payment of said notes, with all interest thereon, as aforesaid, the herein above described and conveyed property is and hereby remains especially bound, mortgaged, and hypothecated in favor of said vendor, or of whomsoever may be the holders of said notes, the purchaser hereby binding himself not to sell, mortgage, encumber, or in any way [wise] alienate any part of said property to the prejudice of the mortgage, and also confessing judgment by these presents for the

129 amount of said notes and interest, to be paid as herein stated; and, furthermore, obligating himself, as an additional security, to have the buildings erected on said lots of ground duly insured against all losses by fire until payment of said notes, and to transfer the policy of insurance in favor of his said vendors. To have and to hold the said described and conveyed property and appurtenances unto the said William N Batson, his heirs and assigns, to their proper use, behoof, and benefit forever by virtue thereof.

The vendors have made due proof of the payment of all taxes relative to said conveyed property for the year 1857, and bind themselves to contribute for their 10$\frac{1}{2}$-12th in the payment of the taxes for the current year, 1858, when due.

By reference to the certificate from the recorder of mortgages in and for this city and parish, dated 23d of November instant, and annexed for reference to another act of even date herewith in this office, it appears that there is no mortgage whatever standing in the name of the said late David

130 Sidle and Henrietta French, his wife, and recorded against the herein above described and conveyed property.

And next personally came and appeared, and to this act intervened, Mrs. Lydia Ann Spafford, wife of the said James C. Davidson, and Mrs. Henrietta Sidle, wife of the said John Davidson, both of lawful age, who, together with Mrs. Caroline E. Spafford, also of lawful age, and wife of Samuel Sidle, also present and intervening to these presents, after the undersigned notary had

explained to them verbally the nature and purport of the foregoing act of sale from their said husband to the said Wm. N. Batson, declared that they are desirous of releasing in favor of the said William N. Batson the property herein before conveyed from the matrimonial, dotal, paraphernal, and other rights, and from all claims, mortgages, or privileges to which they may be entitled, whether by virtue of their marriage with the said James C. and Jno. Davidson and Samuel Sidle or otherwise.

Whereupon the undersigned notary did explain verbally to the said
131 Mrs. Lydia Ann Davidson, Henrietta Davidson, and Caroline E. Sidle, out of the presence of their said husbands, the nature of their rights, which are here detailed, to wit: The wife has a legal mortgage on the property of her husband in the following cases: 1st. For the restitution of her dowry and for the reinvestment of the dotal property sold by her husband and which she brought in marriage, reckoning from the celebration of the marriage. 2d. For the restitution and reinvestment of the dotal property which came to her after the marriage, either by succession or donation, from the day the succession was opened or the donation perfected. 3d. For the reimbursing the amount of her paraphernal property alienated by her and received by her husband or otherwise disposed of for his individual interest. 4th. To indemnify her for debts which she may have contracted with her husband. And 5th. For the donations which may have been made to her by her husband on account of their marriage, and that by renouncing said rights on the property herein before conveyed would deprive them
132 irrevocably of all recourse thereon. And the said Lydia Ann Davidson, Henrietta Davidson, and Caroline E. Sidle did thereupon declare to me, notary, they fully understood the nature and extent of their said rights on the property of their said husbands, and that they nevertheless did persist in their intention of renouncing the same in favor of the said William N. Batson on the property herein before conveyed.

And the said James C. Davidson, Jno. Davidson, and Samuel Sidell being now present, assisting and authorizing their respective wives in the execution of these presents and consenting thereto, they, the said Lydia A. Davidson, Henrietta Davidson, and Caroline Sidle, did again declare that they did and do hereby make a formal renunciation and relinquishment of all their said rights and mortgages on the property hereinbefore conveyed in favor of the said William N. Batson, binding themselves and their heirs at all times to sustain and acknowledge the validity of this renunciation. The whole of which is accepted by William N. Batson.

Thus done and passed in my office, at the city of New Orleans
133 aforesaid, in the presence of Louis de Roche and Charles Laterriere, both of this city, competent witnesses, who hereunto sign their names with the said parties and me, the said notary.

(Signed) GEO. PRICE.
her
AMELIA ⋈ PRICE.
mark.
[Disabled by palsy.]
HENRIETTA DAVIDSON.
JOHN DAVIDSON.
CAROLINE E. SIDLE.
LYDIA ANN DAVIDSON.
SAMUEL SIDLE.
JAMES C. DAVIDSON.
WILLIAM N. BATSON.
E. R. BRADFORD.

CHS. LATERRIERE.
LS. DE ROCHE.
OCTAVE DE ARMAS, *Not. Pub.*

The foregoing is a true copy of an act extant from the register of Octave de Armas, late notary public, and in my possession and custody as his successor in office.

New Orleans, November 11th, 1864.

(Signed) FELIX McCULLOCH, *Notary Public.*

I, register of conveyances, certify that the present act has this day been recorded in my office in Book No. 76, fol. 313.

New Orleans, December 6th, 1858.

(Signed) S. M. WESTMORE, *Reg'r Con.*

134 *Donation of property by William N. Batson to his minor daughter, Sarah A. Batson, filed Jan'y 22nd,* 1864.

STATE OF LOUISIANA,

Parish of Orleans, city of New Orleans:

Be it known that on this fourth day of May, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States of America the eighty-third, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared William N. Batson, esq , of this city, who declared that he does by these presents make donation *inter vivos* gratuitous and irrevocable, unto his minor daughter, Sarah A. Batson, above the age of puberty, the legitimate issue of
135 Grace Baker, his wife, a certain lot of ground situate in the first district of this city, in the square bounded by Tchoupitoulas, New Levee, Race, and Orange streets, and designated by the No. "six." on a plan drawn by H. M elhausen, architect and surveyor, dated 26th day of April, 1845, and deposited in the office of Charles Boudousquie, then a notary in this city, which said lot of ground measures in American measure twenty-six feet seven inches and four lines front on Tchoupitoulas street by one hundred and twenty-seven feet ten inches five ½ lines in depth between parallel lines, together with all the buildings and improvements thereon, rights, ways, and advantages thereunto belonging or in anywise appertaining, and also all the buildings and improvements on lots numbers seven and eight, adjoining the lot herein donated, which latter lots the said William N. Batson purchased as the representative of his said minor daughter, and in her name, from Sam'l Smith, per act passed before George
136 Rareshide, late notary in this city, under date of the fifteenth day of December, 1857, and the said lot No. six, herein donated, was by the said W. N. Batson purchased from Joseph Fields per act passed before Thomas J. Beck, a notary public in this city, under date of the seventeenth of April, 1858.

And now the said Mrs. Grace Baker, wife of said William N. Batson, appears and intervenes, and by these presents accepts this donation, and acknowledges delivery and possession of the aforedescribed property herein donated for and in the name and behalf of her said minor daughter, Sarah A. Batson, her heirs and assigns forever. To have and to hold the said lot of ground number six, together with the buildings and improvements thereon, as well as the buildings and improvements on the lots Nos. seven and eight, adjoining, herein donated unto the said Sarah A. Batson her heirs and assigns, to her proper use and behoof forever. The said donor more-
137 over transfers unto the said Sarah A. Batson, all the rights and actions of warranty to which he is entitled against all the former proprietors of the property herein donated, subrogating said donee to the said rights and actions to be by her enjoyed and exercised in the same manner as they might have been by the said donor himself.

By reference to the annexed certificate from the recorder of mortgages in and for this city and parish, bearing even date herewith, there does not appear to be any mortgage standing in the name of the said William N. Batson, and recorded against the property herein conveyed and donated.

The estimated value of the property herein donated is four thousand two hundred dollars, namely, the lot is valued at twelve hundred dollars, and the buildings on said lots of ground are valued at three thousand dollars.

Thus done and passed at my office, at New Orleans aforesaid, the day, month, and year first above written, in the presence of Timothy J.
138 White, and James A. Charbonnet, witnesses of lawful age, domiciliated in this city, who hereunto sign their names with the parties and me, the said notary, after the reading of these presents.

(Signed) WM N. BATSON.
GRACE BATSON.

T. J. WHITE.
J. A. CHARBONNET.
WM. J. CASTELL, *Not. Pub.*

The foregoing is a true copy of the original act extant in the register of William Joseph Castell, late notary public, which are in my possession and custody as his successor in office.

New Orleans, January 9th, 1864.

(Signed) FELIX McCULLOCH, *Notary Public.*

C. E. Schmidt, esq., on behalf of Mrs. Dufossat, offered in evidence—

1st. Act of sale from Mrs. M. V. S. Dufossat, to Clark, Stanley, and Eager, filed Nov. 28th, 1864.—(Transcribed at page 21.)

2d. The three notes identified with the above act of sale.—(Tran-
139 scribed at pages 30, 31, 32.)

3d. Statement Mr. Duplantier, witness for Mrs. Dufossat, would have sworn to, admitted by U. S. dist. att'y, filed Jan'y 22nd, 1864.

G. Duplantier, witness for Mrs. V. Soniat Dufossat, can prove that Mr. and Mrs. V. Soniat Dufossat are residing in France since 1857. They left New Orleans for France in the year 1857. Mr. Soniat has returned to N. Orleans only once since, and remained here only about one month; this was about one year after he had left. Mrs. Soniat has never returned to this place. Witness knows the property at the corner of Tchoupitoulas and Race, which was owned by Mrs. Soniat. It consisted at the time of five dwelling-houses built of brick. These buildings were erected about 25 years ago by Mrs. Soniat, and were rented as dwelling-houses. Witness has sometimes collected the rent. Witness knows that Mr. and Mrs. Soniat are both natives of the parish of Jefferson, Louisiana. Witness is their nephew. The buildings are three stories high, and divided into six
140 rooms for family residences. The yard to each house is so small that it is more of an alley than a yard.

November term, 1863.

NEW ORLEANS, *Saturday, Jan'y 23d*, 1864.

Court met pursuant to adjournment. Present: Hon. Edw. H. Durell, dist. judge. Absent: Hon. John Catron, presiding judge.

UNITED STATES *vs.* CLARK'S FOUNDRY, &c.	3380.	Cause resumed and submitted on briefs to be furnished.

This cause was resumed, district attorney appearing for libellants, and Messrs. Briggs, Buchanan & Schmidt for claimants and intervenors.

After the offering of additional evidence by the parties, and after argument of counsel, the same was submitted to the court on briefs to be furnished on or before the 6th day of February next.

141 *Evidence.—Extracts from letters of Grace Batson, offered in evidence by U. S. district att'y, and filed Jan'y* 23, 1864.

LONDON, *May 7th*, 1863.

Mr. S. Hopkins, Jr.:

DEAR SIR: Your favor of April 6th, with accounts, was duly received, all of which is satisfactory; also of the 14th ult., with full set of duplicates sent on the 6th.

I am perfectly willing to abide your judgment in all matters pertaining to my business at New Orleans, and you can settle as you please with Mr. Clark; but I think if you take $50 per month for the present it should
142 be with the agreement that he will pay the difference when the war is over and his business revives again. I have been told that he done a very profitable business before the blockade was removed.

(Signed) GRACE BATSON.

I hereby certify the above to be true extracts from Mrs. Grace Batson's letter of the above date, and that the other letters produced in court show that I have paid Mrs. Batson her rent so far as collected up to March 1st, 1862.

(Signed) S. HOPKINS, JR.

Evidence.

144 [Here follows diagram, page 143.]

United States circuit court.

Plea of pardon of Jno. Clark, filed May 21, 1864.

THE UNITED STATES *vs.* CLARK'S FOUNDRY. } 3380.

And now comes into court, by his proctor, John Clark, one of the defendants and claimants herein, and says that subsequent to all and every of the acts and doings charged against him in the libel of information herein filed, whereby his property is sought to be confiscated under the act of Congress of the sixth of August, 1861, the President of the United States issued his proclamation under date the eighth of December, 1863, whereby he declared and made known to all persons who have directly or by implication participated in the existing rebellion, except as therein is excepted, that a full pardon should be granted to them and each of them, with restoration of all rights of property except where these parties have intervened, upon condition that they or such person should take and sub-
145 scribe to an oath, and thenceforth keep and maintain said oath inviolate, and which oath should be registered for permanent preservation.

And this defendant further shows that he is not, nor has he ever been, excepted from the benefits granted by said proclamation by reason of any of the exceptions in said proclamation contained; and that he has, to wit, on the twenty-first day of May present, taken and subscribed the oath therein prescribed, which is duly registered in the records of United States

district court for the eastern district of Louisiana, a certificate whereof is hereunto annexed as part of this plea. By reason whereof the said John Clark prays that by this court here he may be dismissed and discharged from said premises in the libel of information specified; and that Rufus Waples, esq, United States district attorney, be served with notice of this his plea.

(Signed) ED. BRIGGS, *Proctor.*

146 *Amnesty oath of John Clark, filed May* 21, 1864.

CLERK'S OFFICE, U. S. DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA,
New Orleans, May 21*st*, 1864.

This is to certify that John Clark, did, on the 21st May, 1864, take and subscribe the oath prescribed by the President's proclamation of December 8th, 1863, and that the same is registered in this office for permanent preservation, bearing the number 129.

[SEAL.] (Signed) K. LOEW, *D'y Clerk.*

Notice to Rufus Waples, U. S. dist. att'y.

United States circuit court, sixth circuit and eastern district of Louisiana.

UNITED STATES
vs.
CLARK'S FOUNDRY, &C. } No. 3380.

Rufus Waples, esq., U. S. district attorney:

147 Please to take notice that John Clark has this day filed his plea of pardon and his oath of amnesty in the above-entitled cause, a copy of which plea accompanies this notice.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, this 21st day of May, A. D. 1864.

(Signed) F. B. VINOT, *D'y Clk.*

Marshal's return on above notice, received May 23*d*, 1863.

And on the same day and year served a copy of the within notice and copy of claimant's petition, on R. Waples, esq., personally.

New Orleans, May 24th, 1864.

(Signed) M. EGAN, *D'y U. S. Marshal.*

148 *Reasons for judgment.*

UNITED STATES
vs.
THE BUILDING No. 177 CANAL STREET. } No. 3373.

The building No. 177 Canal street, the property of Mrs. Ellenor Winfred Turner, as widow in community of the late James A. Turner, and natural tutrix of her minor children, George Henry Turner and Robert William Turner, is libelled under the act of August 6th, 1861.

On the 28th day of November, 1861, Mrs. Turner, by act passed before William Shannon, a notary public of the city of New Orleans, leased the property libelled to a company or association of gentlemen, then known as "the New Orleans Club," for a term of five years from the 1st day of November, 1860. The New Orleans Club entered upon the property leased, and occupied the same until the advent and breaking out of the present great rebellion. Some time in the spring or summer of 1861 the rebel power,

149 then dominant in New Orleans, took possession of the premises, and

held them until the return of federal authority in April, 1862. During the whole period of rebel occupancy the house libelled was used as the headquarters of Thomas O. Moore, then rebel governor of the State of Louisiana, and also as a passport office, established in aid of the rebellion. Whether the rebel power entered into possession as sub-lessee to "the New Orleans Club," or by virtue of rebel violence, does not clearly appear, but in either case it would not seem that Mrs. Turner, the owner and original lessor of the property, was to be held as having exerted any will in the matter. The lessee is not the agent of the lessor. A lease is a quasi sale for a term of days, months, or years, of which the price is the rent reserved. The lessor can no more change the conditions of a lease without the assent of the lessee than the vendor can change the conditions of an act of sale without
150 the assent of the vendee. If, then, Thomas O. Moore entered the premises leased with the assent of "the New Orleans Club," the club has subjected its interest in the property, to wit, its lease to the chances of confiscation, and the United States may condemn and sell the same, the purchaser assuming the perform all its conditions and obligations. But if Thomas O. Moore entered by force, then neither the New Orleans Club nor Mrs. Turner can be held responsible for his acts. Had Mrs. Turner at the date of the lease of the property under consideration foreseen the coming of the rebellion which is now upon us, she might have inserted a clause to meet the possibility of wrong, but she cannot be held to possess a larger prescience then her neighbours; and when it did come, with all its violences, she, a widow, with two small children clinging to her for support, can hardly be required to have exhibited a courage which would have been as useless as it would have been rare.

151 Let the libel be dismissed and the property restored to claimant. The costs follow the judgment.

(Signed) E. H. DURELL, *Judge.*

Judgment.

Circuit court of the United States, sixth circuit and eastern district of Louisiana, April term 1864.

NEW ORLEANS, *Monday, June 6th,* 1864.

Court met pursuant to adjournment.
Present: Hon. Edw. H. Durell, dist. judge.
Absent: Hon. John Catron, presiding judge.

UNITED STATES *vs.* CLARK'S FOUNDRY, &c. } No. 3380.

To the reasons set forth in the written opinion of the court delivered in the case of the United States *vs.* The Building No. 177 Canal street, it is hereby ordered, adjudged, and decreed that the libel herein, so far as regards the property claimed by the lessors, be dismissed, and the property by them claimed herein be restored to the said claimants. And it is further or-
152 dered, adjudged, and decreed that the said libel be dismissed, so far as relates to the remainder of the property libelled, and that the same be restored to the claimants, C. A. Eager and John Clark, said claimants having taken the oath requisite to avail themselves of the pardon and amnesty granted by the proclamation of the President of the United States of December 8th, 1863, and that reasonable cause of seizure be, and the same is hereby, certified of record.

The exceptions filed in this case are overruled.
Judgment rendered June 6th, 1864.
Judgment signed June 14th, 1864.

(Signed) E. H. DURELL, *Judge.*

Petition for appeal, filed June 25th, 1864.

U. S. circuit court, east. dist. of La., sixth circuit.

UNITED STATES
vs.
CLARK'S FOUNDRY, &C., AND THE GROUND ON which it stands.

153 To the hon. the judges of the circuit court of the United States for the eastern district of Louisiana, sixth circuit:

The petition of Rufus Waples, United States attorney, in the name and in the behalf of the United States of America, libellant, herein respectfully represents, that a final sentence and decree were entered on the 14th day of June, 1864, in the above-entitled cause, in the said U. S. circuit court for the eastern district of Louisiana, in and by which said final sentence and decree it was ordered, adjudged, and decreed that the libel herein, so far as it regards the property claimed by the lessors, be dismissed, and the property claimed herein by them be restored to the said claimants, and that the said libel be dismissed, so far as relates to the remainder of the property libelled, and that the same be restored to the claimants, C. A. Eager and John Clark, and that reasonable cause of seizure be certified of record. That said final sentence and decree is adverse to said libellant, and to his manifest pre-

154 judice and injury. That the matter in controversy exceeds the sum of two thousand dollars. That your petitioner, in behalf of said libellant, feels aggrieved by the rendition of said final decree, and is advised that the same is erroneous, and ought to be reversed.

Wherefore said libellant, in behalf of said United States, doth hereby appeal from the said final sentence and decree to the next supreme court of the United States, returnable on the first Monday of December next, and prays this honorable court to grant him a suspensive appeal from said final decree, the same to operate as a supersedeas.

And that the said final sentence and decree may be reversed, and such other decree thereupon made as to the said Supreme Court shall seem just, and that a transcript of the record and proceedings in this cause duly authenticated may be sent up to the said Supreme Court without delay.

(Signed) RUFUS WAPLES, *U. S. Att'y.*

155 *Order allowing appeal.*

An appeal to operate as a supersedeas is allowed in this case, as prayed for, returnable to the next session of the Supreme Court of the United States, on the first Monday of December next, the libellant being dispensed by law from giving bond and security.

New Orleans, June 27th, 1864.

(Signed) E. H. DURELL, *Judge.*

156 THE UNITED STATES OF AMERICA,
Eastern district of Louisiana:

The President of the United States to Mrs. Louise Almais Avart, wife of Martin Valmont Soniat Dufossat, and Martin Valmont Soniat, greeting:

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at the city of Washington, on the first Monday of December next, to answer the appeal taken by the United States in this cause, and that you show cause, if any there be, why the judgment rendered against the said United States on the 14th June, 1864, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, chief justice of the Su-
[SEAL.] preme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

E. H. DURELL, *Judge.*

157 *Marshal's return.*

Rec'd 28th June, 1864, and on Wednesday, June 29th, 1864, I served a copy of the within citation of appeal on Chas. Schmidt, esq., at his office in person, No. 22 Exchange alley.

D. CHRISTIE, *Deputy U. S. Marshal.*

158 THE UNITED STATES OF AMERICA,
Eastern district of Louisiana:

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

The President of the United States to Mrs. Sarah Ann Warner, wife of Sewall Warner, and her husband, Sewell Warner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, to answer the appeal taken by the United States in this cause, and that you show cause, if any there be, why the judgment rendered against the said United States on the 14th June, 1864, mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

E. H. DURELL, *Judge.*

159 *Marshal's return.*

Rec'd 28th June, 1864, and on Tuesday, June 28, I served a copy of the within citation of appeal on E. Briggs, esq., in person, and notified A. M. Buchanon thereof, they being proctors for deft. in this case.

D. CHRISTIE, *Deputy U. S. Marshal.*

160 THE UNITED STATES OF AMERICA,
Eastern district of Louisiana:

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

The President of the United States to John Clark, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, to answer the appeal taken by the United States in this cause, and that you show cause, if any there be, why the judg-

ment rendered against the said United States on the 14th of June, 1864, mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

E. H. DURELL, *Judge.*

161 *Marshal's return.*

Rec'd 28th June, 1864, and on Tuesday, June 28th, 1864, I served a copy of the within citation of appeal on E. Briggs, esq., in person, and notified A. M. Buchanon thereof, they being proctors defts. in this case.

D. CHRISTIE, *Deputy U. S. Marshal.*

162 THE UNITED STATES OF AMERICA,
Eastern district of Louisiana:

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

The President of the United States to Henry Hope Stanley, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, to answer the appeal taken by the United States in this cause, and that you show cause, if any there be, why the judgment rendered against the said United States on the 14th June, 1864, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and sixty four.

E. H. DURELL, *Judge.*

163 *Marshal's return.*

Rec'd 28th June, 1864, and on Tuesday, June 28th, I served a copy of this citation of appeal on E. Briggs, esq., in person, and notified A. M. Buchanon thereof, they being proctors for deft. in this case.

D. CHRISTIE, *Deputy U. S. Marshal.*

164 THE UNITED STATES OF AMERICA,
Eastern district of Louisiana:

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

The President of the United States to Mrs. Grace Batson, widow in community of William N. Batson, and tutrix and guardian of the minor children issue of said marriage, and Mrs. Sarah Ann Warner, wife of Sewell Warner, and her husband, Sewell Warner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, to answer the appeal taken by the United States in this cause, and that you show cause, if any there be, why the judg-

ment rendered against the said United States on the 14th June, 1864, mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

E. H. DURELL.

165 *Marshal's return.*

Rec'd 28th June, 1864, and on Tuesday, June 28th, 1864, I served a copy of this citation of appeal on E. Briggs, esq., in person, and notified A. M. Buchanon, esq., thereof, they being proctors for deft. in this case.

D. CHRISTIE, *Deputy U. S. Marshal.*

166 THE UNITED STATES OF AMERICA,
Eastern district of Louisiana:

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

The President of the United States to Charles Austin Eager, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, to answer the appeal taken by the United States in this cause, and that you show cause, if any there be, why the judgment rendered against the said United States on the 14th June, 1864, mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

E. H. DURELL, *Judge.*

167 *Marshal's return.*

Rec'd 28 June, 1864, and on Tuesday, June 28th, 1864, I served a copy of the within citation of appeal on E. Briggs, esq., in person, and notified A. M. Buchanon thereof, they being proctors for deft. in this case.

D. CHRISTIE, *Deputy U. S. Marshal.*

168 United States circuit court, eastern district of Louisiana, April term, 1864.

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

NEW ORLEANS, *Thursday, June* 30, 1864.

Court met pursuant to adjournment.

Present: Hon. Edw. H. Durell, dist. judge.

Absent: Hon. John Catron, presiding judge.

Ordered that $1,000 be taxed as the fees due Rufus Waples, U. S. dist. attorney, for services rendered in the above-entitled cause up to date, June 30th, 1864.

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

NEW ORLEANS, *Saturday, July* 16, 1864.

Court met pursuant to adjournment.
Present: Hon. Edw. H. Durell, dist. judge.
Absent: Hon. John Catron, presiding judge.

Ordered that the clerk's cost in this case be taxed at the sum of eighty dollars and fifty cents.

169 April term, 1864.

UNITED STATES
vs.
CLARK'S FOUNDRY, &c. } No. 3380.

NEW ORLEANS, *Tuesday, September 6th*, 1864.

Court met pursuant to adjournment.
Present: Hon. Edw. H. Durell, dist. judge.
Absent: Hon. John Catron, presiding judge.

On motion of James Graham, late United States marshal for the eastern district of Louisiana, and on submitting detailed statement of the costs and disbursements in this case due to him and unpaid, it was ordered that the said costs and disbursements be taxed at the sum of $365 00.

170 United States of America, circuit court of the United States, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Charles Claiborne, clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, do hereby certify that the foregoing 169 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, documents filed, together with all the evidence adduced on the trial of the case of United States *vs.* Clark's Foundry, &c., No. 3380 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 23d day of September, A. D. 1864.

[SEAL] CHS. CLAIBORNE, *Clerk.*

I, Edward H. Durell, United States judge for the eastern district of Louisiana, do hereby certify, that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court. That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 23d day of September, A. D. 1864.

E. H. DURELL, *Judge.*

Filed November 19, 1864.

Supreme Court of the United States.

THE UNITED STATES

vs.

CLARK'S FOUNDRY.

The lots and buildings known as Clark's Foundry, situated in New Orleans, were libelled for confiscation in the circuit court for the sixth judicial circuit, sitting in and for the eastern district of Louisiana, on the allegation that the property was used and employed by the owner in aiding and abetting the insurrection, and that it had been purchased and acquired for that purpose, contrary to the act of Congress of the 6th of August, 1861.

Louise Almais Avart, wife of Martin Souiat Dufossat, intervenes for the protection of her interest, and alleges that she is a loyal citizen of the United States, but absent in France, and that on or about the 2d day of December, 1861, she sold six of the lots of ground on which the foundry is located to John Clark, Henry Hope Stanley, and Charles Austin Eager, for the sum of $16,000, one-third of which was paid down, and as a security for the other two-thirds she retained a special mortgage and vendor's lien and privilege; and she claims to have her interest in the premises protected by the decree of the court. In support of the claim, she produces the deed of sale and the special mortgage or hypothecation, duly authenticated, and in her answer she denies the allegations contained in the libel.

Mrs. Grace Batson, in her own right, and as guardian of her minor children, and Mrs. Sarah Ann Warner, intervening for the protection of their interests, claim a portion of the premises, and allege that they derive title from William N. Batson, a British subject, who died in London in 1859. The claimants leased or let a portion of the premises in

question to John Clark as an iron foundry, through their attorney, Seaman Hopkins. The lease is dated the 11th of March, 1862, and reserves a rent of one hundred dollars a month. The claimants allege that there is due them for rent $2,000, for which they have a privileged lien upon the machinery, tools, &c. The term expired in August, 1864. They deny that they had been guilty of any acts contrary to the act of Congress, and allege that if the lessee had used the property in aiding the insurrection, such act was without their privity or consent, and contrary to the terms of the lease.

John Clark, Henry Hope Stanley, and Charles Austin Eager claim to be joint owners of the tools and machinery, and joint owners of 144 feet of the land on Tchoupitoulas street, which is the same land purchased of the intervenor, Louise Almais Avart, and is subject to the special mortgage and vendor's lien named in her claim, and they claim to be lessees from the widow and heirs of W. N. Batron and Mrs. Warner, of the residue of the premises. The claim admits that while the foundry belonged solely to John Clark, one of the intervenors, and previously to the occupation of New Orleans by the army of the United States, some cannon were made by the said Clark, but not upon the premises described.

To the claim and answer of Louise Almais Avart the district attorney replied, and denied that the intervenor was a loyal citizen of the United States; and he denied that the premises in question were indebted to the intervenor, as alleged by her; and he replied generally, that the libel was true, and the claim of the intervenor untrue. (pp. 18–19.) At the same time the district attorney filed exceptions to the claim of the intervenor, stating that the intervenor was a resident of the State of Louisiana, which State is in rebellion and open resistance to the Government of the United States; and that the intervenor does not bring herself within the protection of the act of Congress, &c. (See the exceptions, top page 19–20.)

To the claim of Sarah Ann Warner and husband he filed a general replication, alleging that the libel was true, and the claim and answer untrue, and at the same time filed exceptions to the claim as above. (Top page 20–21.)

To the claim of Mrs. Grace Batson and Sarah Ann Warner he filed a general replication and exceptions at the same time. (Top pages 21–22.)

To the claim and answer of John Clark, Henry Hope

Stanley, and Charles Austin Eager he filed a general replication, alleging that the libel is true and the answer untrue.

The cause came to a hearing or trial on the 12th of January, 1864, (top page 24,) when the district attorney offered in evidence the monition precepts, marshal's return, showing the property seized; and examined as witnesses, W. H. Nelson, Lawrence Duffy, Jr., Irwin Hull, Thomas Bowers, John Taylor, W. W. Taylor, Francis Emmett, William Green, Francis Leugess, and Thomas Dunn. The intervenors offered in evidence the English certificate of protection of John Clark, a certificate showing that Charles A. Eager had taken the oath of allegiance, a deed of sale of a part of the premises from Mrs. Dufossat, *alias* the intervenor, Louise Almais Avart, to John Clark. The cause was then argued, and the record states that it was agreed that the evidence given on the hearing be admitted between the parties on the trial of all the interventions on their merits.

The cause came on for a further hearing on the 22d of January, 1864, when the intervenor, Charles A. Eager, filed a plea alleging that on the 12th day of January, 1864, he took the oath to support the Constitution of the United States, prescribed in the President's proclamation of pardon and amnesty, dated the 8th day of December, 1863, wherefore he claims he has been pardoned, &c. (See plea, top page 27–28.) To this plea the district attorney, on the same day, filed a demurrer.

On the same 22d day of January, 1864, were filed, as exhibits and evidence in the court, letters of tutorship, appointing Mrs. Grace Batson tutrix of her minor children; a power of attorney from her to Seaman Hopkins, appointing him a general agent to transact her business, and a lease of part of the premises from the agent to John Clark, (top page 29, 30, 31;) a deed of sale of part of the premises from Mrs. Dufossat, *alias* Louise Almais Avart, to William N. Batson, and a deed from Samuel Smith to Sarah A. Batson; a deed of sale from the successor of D. Sidle to William N. Batson, and a deed of donation from William N. Batson to his minor daughter, Sarah A. Batson. The statement of Mr. Duplantier, which the district attorney admitted he would have sworn to, to the effect that the intervenor, Mrs. Dufossat, *alias* Louise Almais Avart, had resided in France since 1857, and had never, during this time, been in New Orleans, was admitted in evidence.

January 23, 1864, the hearing of the cause was again

resumed, and the cause submitted on briefs to be furnished by the 6th of February.

On the 21st of May, 1864, the intervenor, John Clark, filed a plea, in which he alleges that on the same day he had taken the oath prescribed in the President's proclamation of amnesty and pardon, dated the 8th day of December, 1863, whereby he was pardoned, &c. A copy of this plea and notice of filing was served on the district attorney on the 23d day of May, 1863. (See plea, top page, 41.) No replication or demurrer was filed to this plea.

On the 6th of June, 1864, the court pronounced its final decree, ordering that the libel herein, so far as regards the property claimed by the lessors, be dismissed, and that the property claimed by them herein be restored to the claimants; and that the libel be dismissed, so far as regards the remainder of the property, and restored to the claimants, Charles A. Eager and John Clark, they having taken the requisite oath to avail themselves of the pardon and amnesty granted by the President.

From this decree the district attorney appealed to this Court.

This decree ought to be affirmed and the libel dismissed—

1. Because there is no proof in the case of the allegations of the libel. There is no proof that the premises in question had been used or employed by the owners in aiding or abetting the insurrection, or that they had consented to such use, or that the premises had been bought or sold for such purpose.

2. Because the act of Congress under which the proceedings are had is in violation of the fifth and sixth articles of Amendments to the Constitution, which declare that no person shall be deprived of his property without due process of law, and that the accused shall be entitled to a trial by jury. It is also in violation of section 3 article 3 of the Constitution, which declares that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

3. Because the act of Congress was not operative in the place where the offense is alleged to have been committed at the time of its supposed commission, such place being at the time not subject *de facto* to the Government of the United States, but was subject *de facto* to another and different government.

4. The special mortgage interest of Louize Almais Avart

cannot be forfeited, because the same is protected by act of Congress; nor can the interest of John Clark and Charles A. Eager be forfeited, because their pleas of pardon are good and valid.

5. The interests of Grace Batson and her minor children, and of Mrs. Sarah Ann Warner, the lessors of a part of the premises, cannot be forfeited for any offense committed by the lessees without their co-operation or consent.

6. The proceeding by libel *in rem*, to forfeit the real estate of the claimants, is unconstitutional, because it deprives them of a trial by jury.

WM. MARVIN,

Counsel for Claimants.